

RECORD OF TRIAL²

of

Fort Myer, VA 22211
(Station or Ship)

By

GENERAL

COURT-MARTIAL

Convened by _____ Commander _____

(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON

(Unit/Command of Convening Authority)

Tried at

Fort Meade, MD

(Place or Places of Trial)

on

see below

(Date or Dates of Trial)

Date or Dates of Trial:

23 February 2012, 15-16 March 2012, 24-26 April 2012, 6-8 June 2012, 25 June 2012, 16-19 July 2012, 28-30 August 2012, 2 October 2012, 12 October 2012, 17-18 October 2012, 7-8 November 2012, 27 November - 2 December 2012, 5-7 December 2012, 10-11 December 2012, 8-9 January 2013, 16 January 2013, 26 February - 1 March 2013, 8 March 2013, 10 April 2013, 7-8 May 2013, 21 May 2013, 3-5 June 2013, 10-12 June 2013, 17-18 June 2013, 25-28 June 2013, 1-2 July 2013, 8-10 July 2013, 15 July 2013, 18-19 July 2013, 25-26 July 2013, 28 July - 2 August 2013, 5-9 August 2013, 12-14 August 2013, 16 August 2013, and 19-21 August 2013.

1 Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

2. See inside back cover for instructions as to preparation and arrangement.

1 to DVDs and CDs, a culture fed opportunity." Of course, the
2 opportunity he's talking about is penetrating networks and taking
3 classified information. That's Page 38, Your Honor. The network was
4 upgraded and patched up so many times and systems will go down, logs
5 will be lost and when moved or upgraded, hard drives would be zeroed.
6 Recognizing the limitations within our own network and with his own
7 command and how he can exploit them. It's impossible to trace much
8 of these on field networks. He knew he was on a field network. He
9 thought he was not being traced who would honestly expect so much
10 information to be ex-filtrated from a field network. He identified a
11 weakness, he exploited that weakness, Your Honor. Not well
12 intentioned.

13 Your Honor, worldwide distribution, that was his goal.
14 Worldwide includes the enemy, Article 104. He wanted the whole world
15 to see. There's no question about that, Your Honor. That's not in
16 dispute. PFC Manning knew the entire world included the enemy from
17 his training which, shown through his training experience, that he
18 had actual knowledge of, by giving intelligence to WikiLeaks, he was
19 giving it to the enemy and specifically al-Qaeda and al-Qaeda of the
20 Arabian peninsula.

21 The OSC logs, Your Honor. Prosecution Exhibit 141. PE
22 141, open source center logs. Same logs that were on the sorted
23 WikiLeaks most wanted list of the Defense's of both database to

1 harvest. You'll see there, Your Honor, that the accused viewed
2 intelligence products of the enemy including AQAP and you'll see that
3 he viewed intelligence products that terrorists use the Internet, the
4 titles that include Terrorists Using the Internet. Your Honor, also
5 please look at the wire logs, Prosecution Exhibit 136. 136. When
6 you look at Prosecution Exhibit 136, Your Honor, you'll see, among
7 other things, that he viewed intelligence products about specific
8 terrorists using the Internet. He knew terrorists would get the
9 information, but he was more concerned about protecting himself than
10 the information he swore to protect. In discussing how not to get
11 caught he told Adrian Lamo OTR, off the record, is good but change
12 fingerprints every few weeks, fingerprints dealing with the OTR.
13 It's not frequently used by terrorists. So it's not a priority to
14 find a crack. That's Page 18, Your Honor.

15 MJ: Of?

16 TC[MAJ FEIN]: Prosecution Exhibit 30, the Lamo chats, Page 18.
17 Page 38, Your Honor, the hardest part is arguably, Internet access.
18 Uploading any sensitive data over the open Internet is a bad idea
19 since networks are monitored for any insurgent, terrorist, militia
20 and criminal types. He makes that admission. These statements lead
21 to only one conclusion, Your Honor, for PFC Manning's action in that
22 the enemy would receive this information from WikiLeaks -- through
23 WikiLeaks. He showed his knowledge again in this inevitable

1 conclusion when he started to think about getting caught with Adrian
2 Lamo. He tried to justify his actions to himself and Mr. Lamo by
3 saying, Your Honor, this is at Page 33, it was publicly damaging, but
4 didn't increase attacks or rhetoric. PFC Manning continued to try
5 and inform the narrative. There is absolutely no evidence, Your
6 Honor, no evidence that the accused thought the enemy may not get the
7 information as Defense has tried to imply through the discussions of
8 intelligence gaps. The evidence the Court has heard about
9 intelligence gaps, is that is information that has not been confirmed
10 through intel sources, information we still need more of to confirm.
11 Every single witness, Your Honor, has testified about the terrorists
12 using the Internet and if classified information is on the Internet,
13 they will find it and use it.

14 The Defense's conclusion is not rationale, it's not
15 reasonable. It's fanciful. PFC Manning knew what would happen and
16 through his indiscriminate harvesting and leaking of valuable
17 information he made sure that it did happen. He ensured that al-
18 Qaeda could go to WikiLeaks and data mine that valuable U.S.
19 intelligence information.

20 Now, Your Honor, in order to be found guilty of Article
21 104, Aiding the Enemy, PFC Manning had to act of a general evil
22 intent. The defense appears to be arguing that taking 700,000
23 documents from complete and partial databases is not acting in an

1 indiscriminate way, it's whistleblowing because he could have taken
2 millions of documents. One wasn't enough. Hundreds of thousands.
3 Your Honor, the United States offers you to look at the evidence that
4 Private First Class Manning didn't look at the information. He did
5 not read every report. He understood what they were. He understood
6 what the SIGACT stood for. He dealt with SIGACTs every day. He did
7 not read 251,000 Department of State cables in order to reveal
8 something that typically a whistleblower would find, take up through
9 their chain-of-command, go to their team leader, their squad leader,
10 go to the chaplain, go to a JAG, go to an IG, exercise their rights
11 under the Military Whistleblower Protection Act. Go to another
12 government official. That's what a whistleblower does, Your Honor,
13 because after that doesn't happen they're left with no other resort.
14 That's not what PFC Manning did, Your Honor. He found something he
15 knew, he knew would get published on-line because it was significant
16 enough, his own words, and the readme.text file and SD card
17 significant enough that WikiLeaks would post it. He put in
18 searchable form and put it out there. He called it interesting stuff
19 with Julian Assange. Stuff, not I found information that I have
20 determined has been withheld from the public purposely. I've
21 exercised every option I have. No, he found something he thought was
22 interesting and that Julian Assange would publish. That's on Page 4,
23 Your Honor, of the chats, the Assange chats, PE 123. He said to

1 Adrian Lamo, Page 47, "I'm not sure whether I'd be considered a type
2 of a hacker." It's not the government's words calling him a hacker,
3 his words, whether he would be considered a hacker, a cracker, a
4 hackavist, a leaker or what. Your Honor, he did contact the FOIA
5 Office when he found the video that he believed was responsive to a
6 FOIA request. The E-mail address of the FOIA Office was on the
7 material that he allegedly reviewed according to the chat logs.
8 Instead, he doctored a video for maximum impact and helped WikiLeaks
9 release that to get that impact. That's not the act of a
10 whistleblower. He did not approach his command-of-chain, as I
11 mentioned before, about the SIGACTs he read or the NCD cables of the
12 GTMO DABs. He did not reach out to a congressman about the abuses he
13 allegedly saw. Instead, he gave Julian Assange a mountain of
14 classified U.S. government information that he had never even read
15 every document. A video that was encrypted that he had admitted to
16 giving. The one thing in dispute in this case, Your Honor, is the
17 time. He admitted to giving an encrypted video he didn't even watch,
18 Your Honor, for maximum impact. That's not the act of a
19 whistleblower.

20 And care, PFC Manning did not care about anyone but
21 himself, Your Honor. First, he betrayed every Soldier who relied on
22 him with classified information. He cared so deeply about them that
23 he stole even their identities and gave those or potentially or at

1 least, put them on his computer. He stole the identities within the
2 SIGACTs, Soldiers down range, how we rescue or tried to rescue, find,
3 DUSTWUN Soldiers, duty status whereabouts unknown, the procedures we
4 followed, unit identifiers, battle roster numbers. He cared so much
5 for his aunt, Your Honor, he left an SD card with 417,000 classified
6 documents at her house with a smiling photo of himself on it in
7 January of 2010. That was not a tremendous display of concern for
8 others. He cared about our values so much he turned his back on his
9 flag, Your Honor, not caring about the Soldiers he served with, not
10 caring about his government. He cared about no one but himself, even
11 talked about how he was screwing up everything else for the world and
12 he watched it as it went by, all this while knowing, Your Honor, that
13 our enemies, the terrorists, are using the Internet and providing
14 that information to them.

15 Finally, Your Honor, trust. While, the United States
16 government trusted Private First Class Manning and he signed
17 documents and practiced originally. Showing his trust and confidence
18 we have in him -- had in him, he was trusting WikiLeaks. Instead of
19 the American flag, he placed his trust and allegiance in WikiLeaks
20 and Julian Assange. Even professor Benkler stated, Your Honor, that
21 WikiLeaks is a place where a leaker can go and the leaker can trust
22 that they won't be revealed. That's where he placed his trust, Your
23 Honor. He had two contact numbers, as I mentioned yesterday. More

1 information about WikiLeaks, a threat to national security or a
2 lifeline to WikiLeaks. Which way did he choose, Your Honor? He
3 chose to trust WikiLeaks and get them that information so he would
4 not be found out until he was finally -- he laid low, his words from
5 the Lamo chats, until he was out of the Army and then he could come
6 forward and claim his fame.

7 Your Honor, PFC Manning watched the whole thing unfold from
8 a distance, Lamo chats, Page 43. He knew it would be plastered all
9 over the world press what he did. Lamo chats, 9. He knew that the
10 information he compromised affected everybody on Earth, Line 9, Lamo
11 chats. He knew the world's reactions as he sat on his satellite
12 interaction connection he discussed all while witnessing the world
13 freak out at its most intimate secrets being revealed. Yet not a
14 well-intentioned Soldier, not a naive Soldier, Your Honor. He knew
15 the scope of his actions. He knew the size of his audience. In
16 fact, he said now I'm quite possibly on the verge of being the most
17 notorious hackivist or whatever you want to call it. It's all a big
18 mess and I've created it. He even knew, Your Honor, that it's
19 actually wrong because he knew he would be compared to Major Nidal
20 Hasan. His words, Your Honor, Lamo chats Page 25.

21 Your Honor, PFC Manning knew what WikiLeaks was. He knew
22 they published all classified information because he researched
23 WikiLeaks and talked to Julian Assange. He knew that information

1 existed forever on WikiLeaks because they had mirror websites,
2 websites that propagated the information forever on the Internet. He
3 wanted the world to see the information he compromised. He knew the
4 world watched the Apache video in late April. He knew the world saw
5 the Reykjavik cable within 3 days of him compromising it and the
6 reaction the world had. Based off that, Your Honor, he knew the
7 world would see the NCD cables once he released them and he was right
8 because even Osama Bin Laden saw them. Your Honor, aiding the enemy
9 has been a crime since the founding of this nation. It is an ancient
10 crime based on the duty one owes to his country. Private First Class
11 Manning as a Soldier voluntarily embraced a higher duty when he swore
12 an oath to defend this country and his fellow Soldiers. But he
13 didn't like his fellow Soldiers, he didn't like that the United
14 States information Secret because it gave the U.S. an edge. "It gave
15 us an edge." Lamo chats 40. So he said he didn't care about the
16 flag and he compromised hundreds of thousands of documents in the
17 pursuit of his anarchist pathology.

18 MJ: Well, Article 104 is any person offense, right?

19 TC[MAJ FEIN]: It is, Your Honor. It is any person offense,
20 Your Honor, but in this case -- that's actually a key point, Your
21 Honor. This offense, this case is of a Soldier who's a trained Intel
22 Analyst and is being charged under the UCMJ as a Soldier who did
23 this. So yes, Your Honor, but PFC Manning is a Soldier who first

1 swore an oath to this country and then signed a non-disclosure
2 agreement in order to get access to classified information. Not
3 every Soldier, Your Honor, has that ability. Your Honor, he did this
4 all wanting the whole world, including al-Qaeda and al-Qaeda in the
5 Arabian Peninsula, to see everything he compromised and he knew they
6 would. That, Your Honor, is the general evil intent and that is
7 aiding the enemy by giving intelligence. Thank you, Your Honor.

8 MJ: All right. Let's take a brief recess. I want to go over
9 with the parties or, if you're ready to do it now, let me know,
10 whether the parties see any lesser included offenses. I know we went
11 over this months ago but just to clarify for the record to make sure
12 we're all squared away and whether either side sees any special
13 defenses raised. You want to take a recess before we do that?

14 CDC[MR. COOMBS]: Yes, Your Honor.

15 ATC[CPT MORROW]: Your Honor, we have a couple of other things
16 that we'll talk to the defense about it, but our Paralegals have done
17 some scrubbing of the record and we've got some exhibits that aren't
18 signed by you but were admitted. So I don't know if you want to ----

19 MJ: Why don't we just clean all of that up, then. How long of
20 a recess do you think it's going to require to do all of that? Just
21 to give everybody a heads-up, my plan is to go straight into
22 deliberations after we finished all of this for some time this
23 evening. When the Court -- so people know, when the Court opens --

1 goes into deliberations, what happens is I've told both parties that
2 one lawyer has to be there for each side and PFC Manning can be there
3 unless he waives his presence. And it's basically a pro forma thing.
4 I come in in the morning and we open the Court, we close the Court
5 for deliberations. Everybody else leaves. I stay. When I come out
6 of deliberations for lunch or some other reason, we call everybody
7 back in. We open the Court, we recess the Court, and then when I
8 come back to deliberate we do the same thing. Where I'm going with
9 this is we're not doing anything substantive other than that at
10 periods during the day unless the Defense requests oral argument on
11 Monday morning with respect to their motion to reconsider the 641
12 issue or I'm ready to announce a verdict. And once that becomes --
13 I'm going to let the parties know that I'll be ready to announce a
14 verdict and I won't do it until the next day. So that means there
15 will be enough notice to go out that anyone who wants to come and be
16 present can do that. Is that satisfactory to the parties?

17 CDC[MR. COOMBS]: Yes, Your Honor.

18 TC[MAJ FEIN]: It is, Your Honor. The command will also do a
19 press release once the Court notifies the parties so the public and
20 the media will be notified.

21 MJ: Okay. So people are free to be here when we open the Court
22 and we close the Court and we open the Court and we recess the Court,

1 but I just warn you now it will be a 5-minute experience. How long
2 of a recess do we need?

3 CDC[MR. COOMBS]: Just 10 minutes for the Defense, Your Honor.

4 ATC[CPT MORROW]: Your Honor, would you like the exhibits
5 pulled for you ----

6 MJ: Yes.

7 ATC[CPT MORROW]: So, you can sign them?

8 TC[MAJ FEIN]: Probably 20, ma'am, enough for the public to also
9 come and go and then we'll pull the exhibits.

10 MJ: All right. Court is in recess, then, until 5 minutes to 5
11 or 1700.

12 **[The court-martial recessed at 1636, 26 July 2013.]**

13 **[The court-martial was called to order at 1714, 26 July 2013.]**

14 MJ: Court is called to order. Let the record reflect that all
15 parties present when the Court last recessed are again present in
16 court. I met briefly with counsel in chambers to discuss what we
17 will be discussing now on the record. First of all, have either side
18 -- does either side see any lesser included offenses? We have the
19 lesser included offenses for the 641 Specifications 4, 6, 8, 12, and
20 16 already in the instructions. With respect to the only 793 Echo
21 specification that the accused has not -- PFC Manning has not entered
22 a plea to is the Specification 11 of Charge II. Is that correct?

23 CDC[MR. COOMBS]: This is correct, Your Honor.

1 MJ: All right. So there's potentially a lesser included
2 offense for that specification in line with PFC Manning's earlier
3 pleas, the same type of thing. Does either side see that raised?
4 CDC[MR. COOMBS]: Yes, Your Honor, as long as it is -- if the
5 Court were convinced that that happened in November of 2009, then the
6 Defense would agree that if the Court determined that the 793 mens
7 rea requirements for the prohibitive purposes wasn't met. You could
8 have an LIO that's consistent with his pleas to the other 793s for
9 that date. If the Court determines that it did not occur in the
10 November timeframe, instead in the 2010 timeframe, the Defense's
11 position is that would not be a lesser included or an acceptable
12 variance.
13 MJ: All right. So the Defense's position is that would be a
14 fatal variance because the government has proceeded on their theory
15 that this occurred in November.
16 CDC[MR. COOMBS]: Yes, Your Honor.
17 MJ: All right. Does the government agree?
18 TC[MAJ FEIN]: Yes, ma'am.
19 MJ: So if I find it occurs in April, it's not guilty. If I
20 found that it occurs in November, then it's either guilty or a lesser
21 included offense, right?
22 TC[MAJ FEIN]: Yes, ma'am.
23 CDC[MR. COOMBS]: Yes, Your Honor.

1 MJ: And the last one I see is for Specification 16 of Charge
2 II. I mean, the government advised me that they weren't going
3 forward with conversion, that the government theory was basically a
4 theft had -- a stealing or purloining had occurred when PFC Manning
5 moved the global, the 74,000 addresses to his personal computer.
6 Now, does either side see attempted conversion raised here with the
7 evidence?

8 TC[MAJ FEIN]: Yes, ma'am. The United States does see an
9 attempt for the conversion aspect of the 641 offense. I think the
10 evidence has at least raised to the level for an attempt mostly
11 because for the conversion at least in the theory that has been
12 accepted for the other offenses is that once the transmission
13 occurred, then there's been an actual conversion and the evidence has
14 been raised to the point of the actual transmission. So that would
15 be an attempt.

16 MJ: All right. Defense?

17 CDC[MR. COOMBS]: Your Honor, the Defense does not see any
18 evidence that would raise the intent. The Defense's position, all we
19 have is that he put it on his computer and then deleted it. So we
20 don't see an attempted conversion because of the requirement for
21 conversion for substantial interference. So that's the Defense's
22 position on it.

1 MJ: All right. Government, you advised me early that you
2 weren't going forward on a theory of conversion. Did I misunderstand
3 you?

4 TC[MAJ FEIN]: May I have a moment, Your Honor.

5 MJ: Yes. Because that's in my last order on 641.

6 TC[MAJ FEIN]: Ma'am, we actually didn't understand that portion
7 of the order. We didn't ask the Court to reconsider. We do not
8 remember actually saying we wouldn't go forward on the conversion
9 theory. But we didn't argue that based on the Court's order. We do
10 think there's at least an attempt there, Your Honor.

11 MJ: Well, if you are going forward with the conversion theory,
12 how are you going to have an attempted conversion?

13 TC[MAJ FEIN]: Well, it's under the Court's order that there
14 could be a completed conversion, Your Honor. Under the Court's
15 order, there could be a completed conversion which is why the
16 government did not contest the Court's previous order based off of
17 what ----

18 MJ: My order on 641 said that the government wasn't going
19 forward with the conversion.

20 TC[MAJ FEIN]: Correct, Your Honor. And that was not
21 necessarily what we remember our position being. But we didn't ask
22 the Court to reconsider that finding because we thought the evidence
23 was sufficient for the other portions to go forward on purloining and

1 stealing. But to answer your question just now, an attempt could
2 still be there because the ultimate conversion theory would require
3 the transmission of it and if that's the case, Your Honor, then there
4 is an attempt because the information was on his personal computer
5 and could have been -- that's an overt act and a substantial step.

6 MJ: So although the government is not going forward with a
7 completed conversion, the government is going forward with an
8 attempted conversion?

9 TC[MAJ FEIN]: Yes, ma'am.

10 MJ: All right. I'll consider that as a lesser included
11 offense. So we have basically, then, the lesser included offense for
12 the 641 specifications less than a thousand dollars, attempted
13 conversion for Specification 16 of Charge II and the lesser included
14 offenses in accordance with PFC Manning's plea for Specification 11
15 of Charge II, assuming I find this in November of 2009?

16 CDC[MR. COOMBS]: Yes, Your Honor.

17 MJ: All right. Does either side see any additional lesser
18 included offenses raised by the evidence?

19 CDC[MR. COOMBS]: No, Your Honor.

20 TC[MAJ FEIN]: No, ma'am.

21 MJ: Neither do I. Special defenses. Does either side see any
22 special defenses raised?

23 CDC[MR. COOMBS]: No, Your Honor.

1 TC[MAJ FEIN]: Could I have a moment, Your Honor?

2 MJ: Yes.

3 **[There was a brief pause while the trial counsel consulted with co-**
4 **counsel.]**

5 TC[MAJ FEIN]: I'm sorry, Your Honor. The United States is
6 reviewing your previous order from 8 June 2012, and I guess there is
7 one ----

8 MJ: Which order is that?

9 TC[MAJ FEIN]: I'm sorry, Your Honor. This is the lesser
10 included order dated 8 June 2012, Appellate Exhibit 143.

11 MJ: Okay.

12 TC[MAJ FEIN]: And that's the clause 1 and 2 lesser included for
13 the Charge II specifications.

14 MJ: Okay. Well, PFC Manning has already pled to the 793(e)
15 specifications. You mean for the 641 Specification and ----

16 TC[MAJ FEIN]: Yes, ma'am, and the 1030.

17 MJ: Well, the 1030 offenses, I thought PFC Manning already pled
18 guilty to the clauses 1 and 2, variance. Are you talking about
19 clauses 1 and 2 for the greater offenses, just X-ing out the statute?

20 TC[MAJ FEIN]: Sorry, ma'am. I'm just looking at the order
21 again.

22 MJ: Remember, that order was before PFC Manning's plea.

1 TC[MAJ FEIN]: Yes, ma'am. So just for the 641s, Your Honor,
2 and then for Specification 11 of Charge II.

3 MJ: Well, let's assume -- I've taken judicial notice that of
4 the 18 United States Code Section 641 exists. So I'm trying to
5 picture under what circumstances would you have other elements taken
6 out and have just a clause 1 and clause 2 offense left. Are you
7 talking about the information ruling that I gave before, is that the
8 basis for this?

9 TC[MAJ FEIN]: Your Honor, that ruling is what just got us
10 thinking about it because you can have an act necessarily without
11 value. There wouldn't be a theft. It would be an act and it
12 couldn't be prejudiced to good order and discipline and service
13 discrediting.

14 MJ: All right. Defense?

15 CDC[MR. COOMBS]: I understand the government's position,
16 then. The LIO would only be in a situation where no value has been
17 proven and you would X out, I guess, the statute or Section 641. So
18 a specification would just read, for example, using Specification 6,
19 for example. Everything with the exception of the actual code,
20 section and then still say it's conduct that's prejudicial to good
21 order and discipline, kind of a 2-year violation. Is that the
22 government's position?

23 TC[MAJ FEIN]: Yes, ma'am. It would be a taking without value.

1 MJ: If you had a taking without a value, wouldn't that -- are
2 you saying a taking without a thing of value or a taking without a
3 value?

4 TC[MAJ FEIN]: Can we have a moment, Your Honor?

5 MJ: Yes.

6 [There was a brief pause while the trial counsel consulted with his
7 co-counsel.]

8 TC[MAJ FEIN]: Your Honor, the United States doesn't see it as
9 lesser included. Sorry about that.

10 ATC[CPT MORROW]: We are not proceeding with a no value lesser
11 included offense with respect to the 18 U.S.C. 641 offense, Your
12 Honor.

13 MJ: All right. I ruled in my order that even if information --
14 I don't have the ruling in front of me. All right. Well, what the
15 Court, could in essence will do is find conduct prejudicial to the
16 good order and discipline even though not in violation of 18 United
17 States Code Section 641 based on the elements as they are in the
18 Charge Sheet. Do both sides agree to that?

19 TC[MAJ FEIN]: Your Honor, the Court could do that.

20 MJ: So, I mean, it is technically a lesser included offense.

21 CDC[MR. COOMBS]: I think the defense's position, then, would
22 fall back to our previous argument. We would object to it being a
23 lesser included because of preemption under Article 121 if there

1 wasn't the federal provision. So it would be, basically, a taking
2 offense and our position would be that that Article 134 is preempted.

3 MJ: All right. The Court -- I know what your argument was
4 before. Should I come back with something looking like that for the
5 641 offenses, I'll reconvene the Court and we can address that. How
6 about that?

7 CDC[MR. COOMBS]: Yes, Your Honor.

8 TC[MAJ FEIN]: Yes, ma'am.

9 MJ: All right. Is there anything else we need to address
10 before we close the Court for deliberations?

11 TC[MAJ FEIN]: Ma'am, I actually -- I interrupted you when you
12 asked about special defenses. We didn't finish that portion?

13 MJ: Okay. Does either side see any raised?

14 CDC[MR. COOMBS]: No, Your Honor.

15 TC[MAJ FEIN]: No, ma'am.

16 MJ: Neither do I. When I close the Court for deliberation,
17 that basically means that everybody will be leaving the courtroom
18 area which my deliberations area, I'm going to assume, is the
19 courtroom including my chambers and the area in the back. Now, if I
20 need classified evidence, how do I get it?

21 TC[MAJ FEIN]: Ma'am, Sergeant Coates will be here and he'll
22 have access to all the classified evidence.

23 MJ: Okay. And the rest of the evidence is all here?

1 TC[MAJ FEIN]: Yes, ma'am.

2 MJ: Okay. Is there anything else that I'm going to need?

3 TC[MAJ FEIN]: Actually, ma'am, if we could have a quick moment.

4 MJ: Okay.

5 TC[MAJ FEIN]: Yes, ma'am, they're all right there and the
6 classified ones are in the Court's or Sergeant Coates will be able to
7 get for you.

8 MJ: Thank you. One question I did have on the exhibits. Have
9 both sides had an opportunity to look at the court reporter's latest
10 prosecution and defense exhibit list to make sure that everything
11 that you agree with, everything that's been admitted or not admitted?
12 I can go through it briefly and talk about the not admitted
13 exhibits?

14 CDC[MR. COOMBS]: The Defense looked at it yesterday and had
15 no problem with it.

16 MJ: Government?

17 TC[MAJ FEIN]: One moment, please, Your Honor.

18 MJ: Okay.

19 TC[MAJ FEIN]: Ma'am, I think we're going to look at it one more
20 time just based off the information that was fixed in the last recess
21 just to verify that.

1 MJ: Well, that -- I have -- if you're looking at Prosecution
2 Exhibits 31, 31 Alpha and Bravo and 32, 32 Alpha and Bravo, I have
3 them all listed as admitted ----
4 TC[MAJ FEIN]: Yes, ma'am.
5 MJ: ---- on the prosecution exhibit list. Well, let's just go
6 briefly to make sure. I have Prosecution Exhibit 10, which is
7 documents for the dry run witness. That was not admitted.
8 TC[MAJ FEIN]: Yes, ma'am.
9 MJ: Prosecution Exhibit 15 Bravo, substitute for Apache CD.
10 Not admitted.
11 TC[MAJ FEIN]: Your Honor, if I can have a moment?
12 MJ: Yes.
13 TC[MAJ FEIN]: Thank you, ma'am.
14 MJ: So you agree with 15 Bravo not admitted?
15 TC[MAJ FEIN]: Yes, ma'am.
16 MJ: I have Prosecution Exhibits 33 and 34 are marked, but they
17 weren't offered or admitted.
18 TC[MAJ FEIN]: Yes, ma'am.
19 MJ: And I have 37, CD backup XLSX, 38 chat log and 39 screen
20 shot of volumes text.
21 TC[MAJ FEIN]: That's correct, ma'am, because those were
22 admitted at different times.
23 MJ: So those are duplicates?

1 TC[MAJ FEIN]: Your Honor, 37 is not a duplicate but 38 and 39
2 are duplicates.

3 MJ: Okay. Then I have Prosecution Exhibit 44.

4 TC[MAJ FEIN]: That's correct, Your Honor.

5 MJ: And Prosecution Exhibits 49 and 50?

6 TC[MAJ FEIN]: Yes, ma'am.

7 MJ: These are all not admitted.

8 TC[MAJ FEIN]: That's correct, ma'am. 49 was a duplicate.

9 MJ: 49 was a duplicate. Okay. How about the next one I have
10 in the line is 53.

11 TC[MAJ FEIN]: That's not admitted, Your Honor.

12 MJ: The next one I have in line is the acceptable use policy.

13 TC[MAJ FEIN]: Ma'am, 57 was not admitted as well.

14 MJ: Okay, that's right, 57. The next one I have is the
15 acceptable use policy, Figure B1, Army Regulation 25-2. I mean,
16 technically, it wasn't admitted but I've already taken judicial
17 notice of the regulation.

18 TC[MAJ FEIN]: That's correct, Your Honor.

19 MJ: Okay. Prosecution Exhibit 96?

20 TC[MAJ FEIN]: Yes, ma'am.

21 MJ: Prosecution Exhibits 100 and 101?

22 TC[MAJ FEIN]: Yes, ma'am.

23 MJ: 104?

1 MJ: Although, Your Honor, 100 was a duplicate and a later one
2 was admitted.

3 MJ: And Prosecution Exhibits 104 to 105?

4 TC[MAJ FEIN]: I'm sorry. One moment, please, Your Honor.
5 Yes, ma'am. I'm sorry, correction. 100 is not a duplicate. 100 was
6 admitted. It was just admitted during the rebuttal case and 104 was
7 admitted as well.

8 MJ: Okay. I don't have those marked as admitted. So let's
9 double-check.

10 **[There was a brief pause while the trial counsel verified the**
11 **exhibits.]**

12 MJ: All right. I have Prosecution Exhibit 100 as admitted and
13 Prosecution Exhibit 104 also is admitted. Defense, any issues? I've
14 got my initials on them.

15 CDC[MR. COOMBS]: No, Your Honor.

16 MJ: The next one is line is -- you understand Prosecution
17 Exhibit 101 and 105 have not been admitted. Is that correct?

18 TC[MAJ FEIN]: That is correct, Your Honor.

19 MJ: Next one down the line is Prosecution Exhibit 121.

20 TC[MAJ FEIN]: Yes, ma'am.

21 MJ: And the next one I have in line is Prosecution Exhibits 195
22 Alpha and Bravo.

23 TC[MAJ FEIN]: That's correct, ma'am.

1 MJ: And 197.

2 TC[MAJ FEIN]: That's correct, ma'am.

3 MJ: Defense, I have as not admitted Defense Exhibit Alpha.

4 CDC[MR. COOMBS]: Yes, ma'am.

5 MJ: Defense Exhibit Hotel and India.

6 CDC[MR. COOMBS]: That is correct.

7 MJ: Defense Exhibit November?

8 CDC[MR. COOMBS]: Yes, ma'am.

9 MJ: Defense Exhibit Quebec.

10 CDC[MR. COOMBS]: Yes, ma'am.

11 MJ: Defense Exhibit DD.

12 CDC[MR. COOMBS]: Yes, ma'am.

13 MJ: Defense Exhibit GG?

14 CDC[MR. COOMBS]: Yes, ma'am.

15 MJ: Defense Exhibit JJ?

16 CDC[MR. COOMBS]: Yes, ma'am.

17 MJ: Defense Exhibits TT?

18 CDC[MR. COOMBS]: Yes, ma'am.

19 MJ: And UU?

20 CDC[MR. COOMBS]: Yes, ma'am.

21 MJ: And Defense Exhibits XX all the way down to the rest of the

22 remaining exhibits which I think is up to BBB?

23 CDC[MR. COOMBS]: That is correct, ma'am.

1 MJ: All right. So are there any final issues we need to
2 address before I close the Court for deliberations?

3 CDC[MR. COOMBS]: No, Your Honor?

4 TC[MAJ FEIN]: No, ma'am.

5 MJ: All right. Court is closed.

6 **[The court-martial closed at 1737, 26 July 2013.]**

7 **[The court-martial opened at 2017, 26 July 2013.]**

8 MJ: Court is called to order. Major Fein, please account for
9 the parties.

10 TC[MAJ FEIN]: Yes, ma'am. All parties when the Court last
11 recessed are again present except Captain Overgaard, Captain Morrow,
12 Major Hurley, and Captain Tooman.

13 MJ: All right. I actually do have one question before I recess
14 the Court. Government, PFC Manning pled guilty to Specification 5 of
15 Charge III, and with an exception and substitution on a date change
16 from November to January as the beginning date. Is the government
17 going forward with their original date or is the government accepting
18 the accused's plea in its entirety?

19 TC[MAJ FEIN]: Ma'am, the United States will accept the plea in
20 its entirety and not go forward.

21 MJ: All right. Anything else we need to address before we
22 recess the Court?

1 TC[MAJ FEIN]: There's just one administrative issue, Your
2 Honor. In pulling classified exhibits, Prosecution Exhibit 136, this
3 is the CD containing the CIA Wire logs, that was never actually lined
4 through by the Court, although it was admitted on the record. So,
5 it's just simply the initialing by the Court.

6 MJ: All right. Do you agree?

7 CDC[MR. COOMBS]: Yes, Your Honor.

8 MJ: All right. Prosecution Exhibit 136 is going to be formally
9 admitted. Anything else we need to address today?

10 TC[MAJ FEIN]: No, ma'am.

11 CDC[MR. COOMBS]: No, Your Honor.

12 MJ: All right. We'll reconvene at 0900 on Sunday to once again
13 and again have this proceeding and close the court then. Court is in
14 recess.

15 [The court-martial recessed at 2019, 26 July 2013.]

16 [END OF PAGE]

1 [The court-martial was called to order at 0901, 28 July 2013.]

2 MJ: Court is called to order. Captain Overgaard, please
3 account for the parties.

4 ATC [CPT OVERGAARD]: All parties present when the Court last
5 recessed are again present in Court with the following exception:
6 Major Fein is absent and Captain Overgaard is present.

7 MJ: All right. Just for the record then, the court reporter is
8 the same, I'm here, Mr. Coombs, PFC Manning, and Captain Overgaard
9 for the government.

10 ATC [CPT OVERGAARD]: Ma'am, there are two media at the MOC;
11 zero stenographers; one media in the courtroom; four spectators in
12 the courtroom; and zero spectators in the overflow trailer.

13 MJ: All right. Thank you. Just for a bit of housekeeping, I
14 received an email from Mr. Coombs regarding the 641 motions, and the
15 defense does not desire oral argument but does want me to review the
16 cases the government cited. Is that correct?

17 CDC[MR. COOMBS]: That is correct, Your Honor.

18 MJ: All right. Then the Court will continue to take that
19 motion for reconsideration for advisement.

20 The second issue is the Court specifically excluded an
21 individual on Friday because of some issues that have been set forth
22 in Appellate Exhibit 220. I received a letter from this individual
23 dated 26 July 2013, forwarded by email from the defense. Basically a

1 letter of apology and a request to be readmitted to the courtroom.

2 Now, Government, I understand there is an ancillary action with the
3 Garrison Commander regarding this?

4 ATC [CPT OVERGAARD]: Yes, ma'am, the Garrison is considering
5 a bar from post at this point.

6 MJ: What is the status of that?

7 ATC [CPT OVERGAARD]: The status is it hasn't been signed yet
8 as far as the United States knows, ma'am, and we will ensure that
9 this letter gets up to the Garrison Commander.

10 MJ: All right. The Court is not going to address this issue
11 until I'm advised of what the Garrison Commander's decision is. It's
12 the Garrison Commander's responsibility, not this Court's to ensure
13 the safety and welfare of the Soldiers, families, employees, and
14 others on Fort Meade. This Court has no jurisdiction to impact
15 whatever decision he makes and necessarily -- if this individual is
16 excluded from the post he is going to necessarily be excluded from
17 attending this trial. So, the Court does -- it wants to ensure that
18 the letter that this individual sent does get sent up to the Garrison
19 so he has it for his consideration, the Garrison Commander, and the
20 government will advise the Court of whatever decision the Garrison
21 Commander makes when he makes it, okay?

22 ATC [CPT OVERGAARD]: Yes, ma'am.

1 MJ: All right. Is there anything we need to address before I
2 close the court for deliberations?

3 CDC[MR. COOMBS]: No, Your Honor.

4 ATC [CPT OVERGAARD]: No, ma'am.

5 MJ: All right. Before I close the Court, we will reopen the
6 court at 1200. I'm going to take a recess until about 1345, come
7 back on and deliberate until probably about 2000ish this evening.
8 Court is closed now for deliberations.

9 **[The court-martial closed at 0904, 28 July 2013.]**

10 **[The court-martial opened at 1159, 28 July 2013.]**

11 MJ: Court is called to order. Let the record reflect all
12 parties present when the Court last recessed are again present in
13 court. The Court is going to take a recess until 1400, and we'll
14 come back at that time and open the court and then once again close
15 the court for deliberations. Are there any issues we need to
16 address?

17 ATC [CPT OVERGAARD]: Just one thing, ma'am, earlier we said
18 the exhibit number that the letter was going to be added to was 220
19 but it is actually 620; and also there was a new Appellate Exhibit
20 filed on 26 July, which was 621, the Government Response to Defense
21 Motion for reconsideration.

22 MJ: All right. Thank you very much for correcting my inartful
23 description of the appellate exhibit and as such, I just want to make

1 sure the record is clear, I added a copy of the letter to that
2 appellate exhibit as well. Is there anything else we need to
3 address?

4 CDC[MR. COOMBS]: No, Your Honor.

5 ATC [CPT OVERGAARD]: No, ma'am.

6 MJ: Court is in recess.

7 **[The court-martial recessed at 1200, 28 July 2013.]**

8 **[The court-martial was called to order at 1358, 28 July 2013.]**

9 MJ: Court is called to order. Let the record reflect all
10 parties present when the Court last recessed are again present in
11 court. Is there anything we need to address before I close the
12 Court?

13 CDC[MR. COOMBS]: No, Your Honor.

14 ATC [CPT OVERGAARD]: No, ma'am.

15 MJ: All right. Court is closed.

16 **[The court-martial closed at 1358, 28 July 2013.]**

17 **[The court-martial opened at 1955, 28 July 2013.]**

18 MJ: Court is called to order. Let the record reflect all
19 parties present when the Court last recessed are again present in
20 court. Is there anything we need to address before I recess the
21 court until 0900 o'clock tomorrow morning?

22 CDC[MR. COOMBS]: No, Your Honor.

1 ATC [CPT OVERGAARD]: No, ma'am.
2 MJ: Court is in recess until 0900 o'clock tomorrow morning.
3 **[The court-martial recessed at 1955, 28 July 2013.]**
4 **[END OF PAGE]**

1 **[The court-martial was called to order at 0900, 29 July 2013.]**

2 MJ: Court is called to order. Major Fein, please account for
3 the parties.

4 TC[MAJ FEIN]: Yes, ma'am. All parties when the Court last
5 recessed are again present with the following exceptions: Captain
6 Overgaard is absent. Mr. Chavez, court reporter, is so absent. Mr.
7 Robertshaw, court reporter, present. And Major Fein and Captain
8 Tooman are present, Your Honor.

9 Also, ma'am, as of 0900 this morning there are eight
10 members of the media at the media operations center; one member of
11 the media in the courtroom; 15 spectators in the courtroom; and no
12 spectators in the overflow trailer, although it is available.

13 MJ: All right. Is there anything we need to address before I
14 close the court for deliberations?

15 ADC[CPT TOOMAN]: No, Your Honor.

16 TC[MAJ FEIN]: No, ma'am.

17 MJ: All right. Once again, let's close the court. We will
18 open the court and take a recess at 1200 today. Court is in recess -
19 - or court is closed.

20 **[The court-martial closed at 901, 29 July 2013.]**

21 **[The court-martial opened at 1153, 29 July 2013.]**

22 MJ: Court is called to order. Major Fein?

1 TC[MAJ FEIN]: Yes, ma'am, all parties when the court last
2 recessed are again present with the following exception, Mr. Coombs
3 is absent.

4 MJ: All right. Is there anything that either party needs to
5 address?

6 TC[MAJ FEIN]: No, ma'am.

7 ADC[CPT TOOMAN]: No, ma'am.

8 MJ: All right. The court will be in recess until 1400, and I
9 believe the Court will be ready to announce the verdict tomorrow at
10 1300. Does that give the parties enough notice to ensure that people
11 who want to attend the proceedings can attend?

12 TC[MAJ FEIN]: Yes, ma'am, 1300 tomorrow will be enough time.

13 ADC[CPT TOOMAN]: Yes, ma'am.

14 MJ: All right. Court is in recess.

15 **[The court-martial recessed at 1154, 29 July 2013.]**

16 **[The court-martial was called to order at 1400, 29 July 2013.]**

17 MJ: Court is called to order. Let the record reflect all
18 parties present when the Court last recessed are again present in
19 court. Is there anything we need to address before I close the
20 Court?

21 TC[MAJ FEIN]: No, ma'am.

22 ADC[CPT TOOMAN]: No, ma'am.

1 MJ: All right. Once again we will open to -- we'll reopen the
2 court at approximately 8:00 o'clock or 2000. Court is closed.

3 **[The court-martial closed at 1401, 29 July 2013.]**

4 **[The court-martial opened at 2001, 29 July 2013.]**

5 MJ: Court is called to order. Let the record reflect all
6 parties present when the Court last recessed are again present in
7 court. Major Fein, what is the status of the Bar Action with the
8 individual that the Court had ordered excluded from the courtroom?

9 TC[MAJ FEIN]: Yes, ma'am, in reference to Appellate Exhibit
10 620, the letter from the individual was submitted to the Garrison
11 Commander, it was considered, and the Garrison Commander issued a
12 letter of -- a bar letter for the individual.

13 MJ: All right. And like I said, once again the other day, the
14 Garrison Commander is in charge of the welfare of the Soldier's
15 families, employees, and individuals on this installation. Before
16 the Court can consider any change to its order this individual is
17 going to have to convince the Garrison Commander to let him back on
18 post.

19 Okay. Do we have a copy of the Bar Letter to add to
20 Appellate Exhibit 620?

21 TC[MAJ FEIN]: We don't, ma'am, but we'll have it marked and
22 ready for tomorrow morning.

1 MJ: All right. There is just one administrative matter. The
2 Court has done, in its deliberations, noted that there was a -- for
3 Specifications 4, 6, 8, 12, and 16 of Charge II, stealing,
4 purloining, or knowingly converting records belonging to the United
5 States of a value in excess of \$1,000.00 in violation of 18 United
6 States Code Section 641, and Article 134, UCMJ, the Court's
7 instructions at Appellate Exhibit 410(a) omitted the word, "Cost" in
8 the statutory definition of value. Accordingly, the Court makes the
9 following amendment to the instructions on the definition of value
10 for these specifications: Current instruction, "Value" means the
11 greater of 1) the face par or market value or the price whether
12 wholesale or retail. A "Thing of value" can be tangible or
13 intangible property, government information, although intangible, is
14 a species of property and a thing of value. Amended instruction:
15 "Value" means the greater of 1) the face par or market value or 2)
16 the cost price whether wholesale or retail. A "Thing of value" can
17 be tangible or intangible property, government information, although
18 intangible, is a species of property and a thing of value. So, in
19 essence I just added the word "cost". That's the statutory
20 definition in the statute. You can add that as the next appellate
21 exhibit in line.

22 Is there anything else we need to address before we recess
23 the court today?

1 TC[MAJ FEIN]: No, ma'am.
2 ADC[CPT TOOMAN]: No, ma'am.
3 MJ: All right. The Court -- The work the Court has to do, I
4 don't need to be in closed session to do it. So, we will go back on
5 the record tomorrow at 1300.
6 TC[MAJ FEIN]: Yes, ma'am.
7 MJ: Court is in recess.
8 [The court-martial recessed at 2003, 29 July 2013.]
9 [END OF PAGE]

1 [The court-martial was called to order at 1258, 30 July 2013.]

2 MJ: Court is called to order. Major Fein, please account for
3 the parties.

4 TC[MAJ FEIN]: Yes, ma'am. Your Honor, all parties when the
5 Court last recessed are again present with the following additions:
6 Captain Morrow, Captain Overgaard are present, Mr. Coombs, and Major
7 Hurley are present. Additionally, Your Honor, as of 12:55 hours
8 there are 91 members of the media at the media operation center; one
9 stenographer; eight members of the media in the courtroom; 30
10 spectators in the courtroom; 38 spectators in the overflow trailer;
11 and if it reaches capacity, there is available seating in the
12 overflow area.

13 MJ: All right. Thank you. Is there anything we need to
14 address before we proceed?

15 CDC[MR. COOMBS]: No, Your Honor.

16 TC[MAJ FEIN]: No, ma'am.

17 MJ: All right. First of all on scheduling, we will have
18 sentencing proceedings starting tomorrow at 0930. The Court is
19 prepared to rule on the Defense Motion for Reconsideration of the
20 Court's 24 July 2013, Supplemental Ruling, R.C.M. 917 motion, 18
21 United States Code Section 641 specifications.

22 On 24 July 2013, the Defense filed a Motion for
23 Reconsideration, Appellate Exhibit 614 of this Court's 24 July 2013,

Supplemental Ruling: Defense Motions for Findings of Not Guilty, R.C.M. 917; Appellate Exhibit 613. The ruling denied the Defense Motions for Findings of Not Guilty and for Mistrial for Specifications 4, 6, 8, 12, and 16 of Charge II. On 26 July 2013, the Government filed a response in opposition, Appellate Exhibit 621. The Defense Motion for Reconsideration presents additional argument for the issues raised in the original Defense Motion Appellate Exhibit 593.

The Court adheres to its ruling at Appellate Exhibit 613. The Court has ruled and the Defense has made its record.

Ruling: The Defense Motion for Reconsideration is denied. So, ordered this 30th Day of July 2013.

That is the next appellate exhibit in line.

All right. The Court -- The defense has asked the Court to issue special findings in this case. The Court has drafted special findings and will issue those in due course. I will not issue them today.

Members of the Gallery, I will now announce the verdict. There are a number of charges I will address in my announcement of the verdict. It will take some time. If there is any outburst or disturbing conduct I will stop, and if I find there has been a disturbance I will order the disturbing party to be escorted out of the courtroom by security.

FINDINGS

Accused and counsel, please rise.

[The accused and defense counsel did as directed.]

PFC Bradley E. Manning, this Court finds you:

Of Charge I and its Specification:

Not Guilty.

Of Specification 1 of Charge II:

Guilty.

Of Specification 2 of Charge II

In accordance with your plea:

Guilty, except the words and figures, "15 February 2010" and "5 April 2010", Substituting Therefore the words and figures, "14 February 2010" and "21 February 2010", further excepting the words, "Information relating to the national defense, to wit", further excepting the words, "with reason to believe such information could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicate, deliver, transmit or cause to be delivered, or transmitted", substituting therefore the words, "did willfully communicate", further excepting

1		the words and
2		figures, "a
3		violation of the
4		United States Code
5		Section 793(e)".
6		Of the excepted
7		words and figures:
8		Not Guilty. Of the
9		substituted words
10		and figures:
11		Guilty.
12	Of Specification 3 of Charge II:	Guilty, except the
13		words and figures,
14		"22 March 2010",
15		substituting
16		therefore the words
17		and figures, "17
18		March 2012". Of
19		the excepted words
20		and figures: Not
21		Guilty. Of the
22		substituted words
23		and figures:
24		Guilty.
25	Of Specification 4 of Charge II:	Guilty.
26	Of Specification 5 of Charge II:	Guilty.
27	Of Specification 6 of Charge II:	Guilty.
28	Of Specification 7 of Charge II:	Guilty.
29	Of Specification 8 of Charge II:	Guilty.
30	Of Specification 9 of Charge II:	Guilty.
31	Of Specification 10 of Charge II:	Guilty.
32	Of Specification 11 of Charge II:	Not Guilty.
33	Of Specification 12 of Charge II:	Guilty.
34	Of Specification 13 of Charge II:	Guilty.
35	Of Specification 14 of Charge II:	In accordance with
36		your plea, Guilty,
37		except the words
38		and figures "15
39		February 2010" and
40		"18 February 2012",
41		substituting the
42		words -- therefore,
43		the words and
44		figures, "14
45		February 2010" and

"15 February 2010";
further excepting
the words,
"knowingly exceeded
authorized access",
substituting
therefore the
words, "knowingly
accessed"; further
excepting the
words, "with reason
to believe such
information -- that
such information so
obtained could be
used to the injury
of the United
States or to the
advantage of any
foreign nation, in
violation of 18
United States Code
Section 1030(a)
(1)". Of the
excepted words and
figures: Not
Guilty. Of the
substituted words
and figures:
Guilty.
Guilty.
Guilty.
Guilty.
Guilty.
Guilty.
Guilty.
Guilty, except the
words and figures,
"1 November 2009",
substituting
therefore the words
and figures, "8
January 2010". Of
the excepted words

Of Specification 15 of Charge II:
Of Specification 16 of Charge II:
Of Charge II:
Of Specification 1 of Charge III:
Of Specification 2 of Charge III:
Of Specification 3 of Charge III:
Of Specification 4 of Charge III:
Of Specification 5 of Charge III:

and figures: Not
guilty. Of the
substituted words
and figures:
Guilty.

Of Charge III: Guilty.

Please be seated.

[The accused and defense counsel did as directed.]

MJ: I will add the written verdict as the next appellate
exhibit in line. Court is in recess until 0930 tomorrow.

[The court-martial recessed at 1304, 30 July 2013.]

[END OF PAGE]

1 [The court-martial was called to order at 0951, 31 July 2013.]

2 MJ: Court is called to order. Major Fein, please account for
3 the parties.

4 TC[MAJ FEIN]: Your Honor, all parties in Court when Court last
5 recessed are present with the exception of Captain Overgaard. Also,
6 Your Honor, as of 0935 this morning there are 156 members of the
7 media at the media operation center, one stenographer; one member of
8 the media in the courtroom, 22 spectators in the courtroom; and no
9 spectators in the overflow trailer although it remains available all
10 day.

11 MJ: PFC Manning, we are now going to enter into the sentencing
12 phase of the trial where you have the right to present matters in
13 extenuation and mitigation. That is, matters about the offenses or
14 yourself that you want me to consider in deciding your sentence.

15 In addition to the testimony of the witnesses and offering
16 of documentary evidence, you, yourself, may testify under oath as to
17 these matters or you may remain silent, in which case I will draw no
18 adverse inferences from your silence. On the other hand, if you
19 desire you may make an unsworn statement. Because the statement is
20 unsworn, you cannot be cross-examined on it. However, the Government
21 may offer evidence to rebut any statement of fact contained in your
22 unsworn statement. An unsworn statement may be made orally, in

1 writing, or both. It may be made by you, your counsel on your
2 behalf, or both. Do you understand these rights?

3 ACC: Yes, Your Honor.

4 MJ: Is the personal data on the Charge Sheet accurate?

5 TC[MAJ FEIN]: Yes, Your Honor, it was amended as of this
6 morning.

7 MJ: The amendment was by virtue of a Xerox copy of the Charge
8 Sheet, or ----

9 TC[MAJ FEIN]: It was, Your Honor. And a copy of that Xerox --
10 or the Xerox itself is with the court reporter with all the
11 amendments that have made up to this point.

12 MJ: That would be the basic pay change then to \$2,014.80?

13 TC[MAJ FEIN]: Yes, ma'am, and also the date imposed for
14 pretrial restraint from 29 May 2010 to 27 May 2010.

15 MJ: All right. Appears in order. Mr. Coombs, understanding
16 there was an Article 13 motion in this case, outside of the
17 parameters of that motion has PFC Manning been punished in any way
18 that would constitute the pretrial punishment under Article 13?

19 CDC[MR. COOMBS]: No, Your Honor.

20 MJ: Thank you. For the record, I gave days 112 days of
21 pretrial confinement -- additional pretrial confinement credit after
22 hearing that motion. PFC Manning, is that correct?

23 ACC: Yes, Your Honor.

1 MJ: Now, Counsel, based on the information on the Charge Sheet,
2 PFC Manning should be credited according to my calculations with 100
3 -- or 1,162 days of pretrial confinement credit and 112 days Article
4 unlawful pretrial confinement credit for a total of 1,274 days as of
5 today. Is that correct?

6 TC[MAJ FEIN]: Yes, ma'am.

7 CDC[MR. COOMBS]: Yes, Your Honor.

8 MJ: Do we have anything to address before we proceed with the
9 Government's case.

10 TC[MAJ FEIN]: Yes, ma'am. Other administrative matters, Your
11 Honor, the Garrison Commander's Bar was a document that the Court
12 asked to be marked. Was marked. It is marked as Appellate Exhibit
13 622. The Court's ruling on the R.C.M. 940 or 641 ----

14 MJ: Can I -- It's already been marked as Appellate Exhibit 622.
15 Can't we just put it in with the remaining documents with the
16 Appellate Exhibit 620?

17 TC[MAJ FEIN]: We could, Your Honor, except it's already been
18 marked in separate filings.

19 MJ: All right.

20 TC[MAJ FEIN]: Also, Your Honor, the Court's ruling for the
21 R.C.M. 641 motion, the motion to dismiss, that's been marked as
22 Appellate Exhibit 623. The Court's verdict is marked as Appellate
23 Exhibit 624. The defense's motion to merge Specifications 5 and 7

1 for findings dated 30 July 2013, has been marked as Appellate Exhibit
2 626. Defense motion to merge Specifications 4 and 6 for findings
3 dated 30 July 2013, has been marked as Appellate Exhibit 627. And
4 the defense's motion to merge as unreasonable multiplication of
5 charges for sentencing dated 30 July 2013, has been marked as
6 Appellate Exhibit 628.

7 MJ: All right. I met in chambers with counsel earlier in a
8 R.C.M. 802 conference; once again that's a conference where I discuss
9 scheduling and issues that are going to arise in cases. The defense
10 had given me copies of the three motions they had filed. The
11 Government has asked until Friday to respond. So I have granted the
12 Government the 2 days to respond and I will have a ruling on that
13 early next week. Does the defense desire oral argument with respect
14 to those motions?

15 CDC[MR. COOMBS]: Not at the time, Your Honor. When we
16 receive the Government's response I can alert the Court if we need
17 oral argument.

18 MJ: All right. Let me know.

19 CDC[MR. COOMBS]: Yes, Your Honor.

20 MJ: And, Government, same thing.

21 TC[MAJ FEIN]: Yes, ma'am.

22 MJ: Is there anything else we need to address at this time
23 before we proceed with the Government's case?

1 TC[MAJ FEIN]: No, ma'am. But prior to calling our first
2 witness, we would ask for a 10 minute recess.

3 MJ: All right. Court is in recess then until 5 minutes after
4 10.

5 **[The court-martial recessed at 0957, 31 July 2013.]**

6 **[The court-martial was called to order at 1010, 31 July 2013.]**

7 MJ: Court is called to order. Let the record reflect all
8 parties present when the Court last recessed are again present in
9 court.

10 Before the Government starts the case I neglected to ask
11 the parties what they believe the maximum punishment is based upon
12 the verdict yesterday.

13 TC[MAJ FEIN]: Your Honor, the maximum punishment based on
14 verdict is 136 years confinement.

15 MJ: And?

16 TC[MAJ FEIN]: Yes, ma'am. And a -- to be -- excuse me; Your
17 Honor, it's 136 years maximum confinement to be reduced to the rank
18 of Private, E1, and to be dishonorably discharged from the United
19 States Army.

20 MJ: Is there a forfeiture penalty that's possible?

21 TC[MAJ FEIN]: Yes, ma'am, and total forfeiture of all pay and
22 allowances.

23 MJ: Is the government interested in a fine?

1 TC[MAJ FEIN]: Yes, as originally stated, Your Honor.

2 MJ: Does the Defense agree?

3 CDC[MR. COOMBS]: Defense agrees with the maximum punishment,
4 but would argue that a fine is not appropriate.

5 MJ: And the Court agrees with that as well. The maximum
6 authorized punishment in this case based upon the verdict,
7 understanding we have the Defense motions for unreasonable
8 multiplication of charges for sentencing; as it currently stands
9 would be the maximum penalty: Reduction to the grade of Private, E1,
10 total forfeiture of all pay and allowances, 136 years of confinement,
11 and dishonorable discharge and the Government has requested a fine.
12 Is there anything else we need to address before we proceed?

13 TC[MAJ FEIN]: No, ma'am.

14 CDC[MR. COOMBS]: No, Your Honor.

15 MJ: Government, call your first witness.

16 TC[MAJ FEIN]: Your Honor, the United States calls Brigadier
17 General Robert Carr.

18 **BRIGADIER GENERAL ROBERT CARR, U.S. Army, retired, was called as a**
19 **witness by the prosecution, was sworn and testified as follows:**

20 **DIRECT EXAMINATION**

21 **Questions by the trial counsel [MAJ FEIN]:**

22 Q. Sir, you are Brigadier General Robert Carr United States
23 Army retired?

1 A. I am.

2 Q. Sir, before we continue, I'd like to remind you this is an
3 unclassified open session. If any questions that the United States,
4 the Defense or Court asks you that elicits classified information
5 please notify the Court prior to answering.

6 Sir, what is your current position in your retired status?

7 A. I am an employee of the Northrop Grumman Corporation. I
8 work on the corporate staff and I'm their Corporate Lead Executive
9 representing them at Fort Meade and Aberdeen customers and community.

10 Q. Sir, when did you retire from active duty?

11 A. My last day was, I think I signed out on about 5 July 2011.

12 Q. And, sir, you are aware that you are here today to discuss
13 your expertise in the DoD intelligence operations and intelligence
14 sharing with the United States Government, with coalition partners
15 and foreign partners?

16 A. I am.

17 Q. And, sir, in that capacity will you be able to, once we get
18 through this, assuming the Court allows it, to give an opinion on the
19 impact of PFC Manning's criminal conduct on the Department of
20 Defense's intelligence operations?

21 A. I will.

1 Q. And also an opinion, sir, on the impact to information
2 sharing within the United States Government and with foreign nations,
3 foreign partners and coalition forces?

4 A. I will.

5 Q. Thank you, sir.

6 MJ: What is the -- Say it very slowly ----

7 TC[MAJ FEIN]: Yes, ma'am.

8 MJ: ---- scope of expertise that you are looking to qualify
9 this witness for?

10 TC[MAJ FEIN]: Yes, ma'am. Your Honor, United States intends to
11 qualify General Carr as an expert in DoD intelligence operations.

12 MJ: All right.

13 TC[MAJ FEIN]: And intelligence sharing with the United States
14 Government ----

15 MJ: All right.

16 TC[MAJ FEIN]: ---- with foreign partners and coalition forces.

17 MJ: All right. Proceed.

18 **Questions continued by the trial counsel [MAJ FEIN]:**

19 Q. Sir, prior to your retirement, what was your last job in
20 the United States Army?

21 A. I was the Director of the Defense Counterintelligence and
22 HUMINT Center for the Defense Intelligence Agency.

23 Q. And how long were you in that position, sir?

1 A. From September of '09 until my retirement in July '11.

2 Q. And in general, sir, what were your responsibilities as the

3 Director of the Defense Counterintelligence HUMINT Center for DIA?

4 A. So I oversaw the defense covert program. I was the

5 Director of the Defense Attaché System. I led Defense HUMINT

6 Operations on behalf of the Defense Intelligence Agency as well as a

7 number of counterintelligence operations that were run within the

8 Defense Intelligence Agency and then provided that leadership to the

9 senior DoD person working HUMINT and CI across the community.

10 Q. Sir, in that position as the Director of the DCHC, who did

11 you report to, sir?

12 A. I reported to General Burgess.

13 Q. Who is General Burgess?

14 A. Director of the Defense Intelligence Agency.

15 Q. And who did he report to as the Director of DIA?

16 A. I believe he reported to the Under Secretary of Defense for

17 Intelligence and then the Sec Def.

18 Q. And, sir, what was your position at the time of the

19 WikiLeaks releases in the summer of 2010?

20 A. I was the Director of the Defense Counterintelligence and

21 HUMINT Center.

22 Q. And, sir, when you retired, what was your military rank?

23 A. Brigadier general.

1 Q. What was your branch in the United States Army?

2 A. My entire career was in the Military Intelligence Branch.

3 Q. And, sir, how long did you spend on active duty in the Army

4 as a Military Intelligence Office?

5 A. 31 years and a couple months.

6 Q. Sir, what I'd like to do now is talk about your career

7 somewhat briefly. But starting with your first duty position, sir,

8 what was your first duty position as a Military Intelligence Officer?

9 A. S2 of a Combat Engineer Battalion.

10 Q. And then what was your next job, sir?

11 A. Special Security Officer running SCIFs on behalf of

12 Intelligence and Security Command.

13 Q. And then about what year was that, sir, that you were a

14 SSO?

15 A. 1984/85.

16 Q. And then what about your next job, sir?

17 A. I then went to, for about 4 plus years to the 2nd Armor

18 Division Forward in Germany where I was Assistant Brigade 2,

19 Secretary of General Staff of the CG and commanded a Combat

20 Electronic Warfare Intel Company.

21 Q. Sir, was that your company command as a Military

22 Intelligence Officer?

23 A. That was one of a couple commands, yes.

1 Q. What was your next command, sir, as a Military Intelligence
2 Officer?

3 A. I commanded the Army Ground Detachment for the Joint Stars
4 Effort in Desert Storm.

5 Q. In general, what did that consist of, sir, at least what
6 were you responsible for as the Battalion Commander?

7 A. That was another -- That was detachment command. I was
8 responsible for about 45 young Soldiers that took the Joint Star
9 System out of the acquisition process and put it to use in Desert
10 Storm. First time it ever went to the battlefield.

11 Q And, sir, what's your next command after that detachment
12 command?

13 A. It was a battalion command, I commanded a SIGINT Battalion
14 at Fort Gordon, Georgia.

15 Q. What were the general responsibilities of that battalion
16 you commanded?

17 A. Oversaw about 400 plus young SIGINT Soldiers who worked
18 inside what was known as the Gordon Regional Security Operations
19 Center now known as NSA, Georgia.

20 Q. What do you mean, sir, about the 400 plus SIGINT Soldiers?
21 What type of Soldiers were they?

1 A. Soldiers that were working in the Signals Intelligence
2 business. So they would receive information, intel collection and,
3 you know, provide reports out to the force.

4 Q. Sir, before continuing, when you were the Detachment
5 Commander of the Joint Stars Program, was that in support of a
6 military operation?

7 A. It was. It was in support of Desert Shield and Desert
8 Storm.

9 Q. Were you deployed at that time?

10 A. I was deployed into Saudi Arabia and I had troops spread
11 out all around the country.

12 Q. Sir, what position did you hold after your battalion
13 command at Fort Gordon?

14 A. I went to INSCOM Headquarters where I was the assistant G3
15 for information operation.

16 Q. Sir, before we continue with that job, what is, in a brief
17 summary, what is INSCOM?

18 A. INSCOM is the major command for the U.S. Army that oversees
19 intelligence operations.

20 Q. Sir, does INSCOM have a worldwide presence?

21 A. It has a -- about, you know, 10 to 12,000 plus personnel
22 spread out in 13 commands positioned globally and in nearly every
23 theater of operation and war zone.

1 Q. Sir, how do they support war fighting combatant commanders?

2 A. INSCOM's job not only is to produce intelligence and push
3 it down to the tactical force but it's to provide that integration
4 with the national intel agencies to facilitate that flow of
5 information that's needed for the battlefield.

6 Q. One moment, please. Sir, as the deputy G3 at INSCOM what
7 were your general responsibilities at that time?

8 A. At that time it was 2000/2001, my primary duty was to help
9 the U.S. Army and INSCOM move forward in the information operations
10 business at that stage and I was the Combat Developer for Computer
11 Network Attack Capabilities.

12 Q. Sir, after your time as the INSCOM, J -- Deputy J3, excuse
13 me, what job did you hold after that?

14 A. I went to U.S. Army War College at Carlisle Barracks.

15 Q. Did you have a thesis of any type?

16 A. I did. I think -- I think it was on something to do with
17 security assistance work.

18 Q. Where did you go after the War College, sir?

19 A. I deployed to Bosnia where I was the J2 or Senior Intel
20 Officer of the Stabilization Force NATO in Bosnia, as well as the J2
21 for the US team there in Bosnia overseeing the US National Intel
22 Center and I was the Chief of Staff for the Joint Interagency Task
23 Force for counterterrorism there in Bosnia.

1 Q. All that -- Those three hats, sir, were at the same time?

2 A. They were simultaneous, exactly.

3 Q. Were you the Senior Intel DoD Official at the time in
4 Bosnia?

5 A. Absolutely.

6 Q. What were your general responsibilities as Senior Intel
7 Official in Bosnia at that time, sir?

8 A. To oversee the NATO Intelligence structure, to provide
9 analytical reports to the command, to work the tasking associated
10 with the assets, the Intel collection assets, to place demands on the
11 US system so that the Intel flow from the US system would make its
12 way into NATO and support all of us there in Bosnia. It was a
13 general role as a Senior Intelligence Officer of a command engaged in
14 an operational mission.

15 Q. So, sir, in reference to what the United States intends to
16 offer for your expertise, what experience did you receive as the J2
17 in Bosnia at the time with information sharing among foreign
18 partners?

19 A. A huge responsibility. In that time and at that point the
20 predominant producer of Intel in that environment was the United
21 States military. And it was critical that we create the processes,
22 the means to both protect our sources and our capabilities and at the
23 same time ensure that we push the information legitimate, legally,

1 and correctly into the NATO channels so that we could have a seamless
2 understanding of the battlefield across all the various nations that
3 were working in that environment.

4 Q. So to the best of your memory, sir, I know it's been a few
5 years and, of course, in an unclassified manner, about how many
6 different foreign partners were you dealing with on a daily or weekly
7 basis? An estimate, sir?

8 A. On a daily or weekly basis at least 20, you know, in a
9 series of a month it might be more than 20, but ----

10 Q. When conducting operations with them, how did that include
11 information sharing or intelligence sharing?

12 A. Well, it, you know, it included -- it included making sure
13 that as much of the US information that was available found its way
14 into the correct process flow to migrate into the NATO networks.

15 Q. And, sir, what about your experience then with coalition
16 forces, is that similar?

17 A. It is similar. Obviously a coalition environment might not
18 have the maturity of rules and processes that a NATO environment has
19 and we've built over time. So, you know, a lot more has to come with
20 experience and understanding knowledge and just practical application
21 as to how to make things work in that type of environment.

22 Q. And, sir, after your time as the J2 in Bosnia, what was
23 your next assignment?

1 A. I returned to the United States for brigade command. I
2 commanded a brigade in the INSCOM Command and this particular brigade
3 was overseeing the Joint Operation at the Gordon Regional Security
4 Operations Center, which is a signals intelligence organization now
5 known as NSA Georgia.

6 Q. Sir, how do you distinguish, other than one's a battalion
7 and brigade command, your responsibilities as Battalion Commander for
8 a certain battalion and then you're coming back to Fort Gordon as the
9 Brigade Commander for the entire brigade?

10 A. Significance difference. Size and scope and magnitude
11 being one. You move from 400 Soldiers to about 2,200, Army, Navy,
12 Air Force and Marine and civilians that are working. The second
13 thing is I had a much bigger operation. The Army piece of that
14 operation was very, somewhat small, 50 to 60 folks and as a battalion
15 commander. As a brigade commander I had to oversee the entire
16 operation of that regional center. And that regional center was to
17 take, you know, operational and national level intelligence and push
18 it out to the war fight. In this case during that time 2003/2005 we
19 were engaged in supporting both Iraq and Afghanistan operations
20 directly from there.

21 Q. And by support, sir, just generically, what do you mean?

22 A. By support meaning that we were responding to the
23 priorities and the requirements and the needs of the tactical

1 commanders on the ground and that we were executing that collection
2 and turning it into information of value that could be used by
3 forces.

4 Q. Sir, after your time as Brigade Commander of the Gordon
5 facility, where did you go after that?

6 A, I was then assigned as the Assistant J2 for the Joint Chief
7 of Staff.

8 Q. And what were your general duties there, sir, as the
9 Assistant J2 on the Joint Staff?

10 A, Oversaw a number of areas for the J2 to keep the
11 organization running. Certainly reviewed and validated everything
12 that was heading into the J2. I was the J2 representative to the
13 morning brief to the J3 every morning in the National Military
14 Command Center. I was the primary interface to Congress for the J2
15 and the various Intel committees. And then represented the J2 in his
16 absence. There were other duties in there I think, you know, always
17 working processes in terms of information sharing with coalitions and
18 of course those things have certain processes that you work through
19 the interagency and things. I certainly was the person that
20 represented the J2 on a number of those things and I participated in
21 detainee review processes as the J2 representative there.

1 Q. So, sir, just taking a few of those one at a time. What
2 was your specific role as the Deputy J2 on the Joint Staff as
3 information sharing, first start within the United States Government?

4 A. Well, I think basically to be able to help those J2s. The
5 Joint Staff sits, you know, in a place between the 10 combatant
6 commands and the Secretary of Defense and so the J2s of these various
7 commands had that responsibility to work the intelligence operation
8 mechanisms in their particular command. If they struggled with, you
9 know, needing additional authorities or needing more coordination
10 between the national level then the Joint Staff would step in there
11 and attempt to work that and negotiate that between Intel agencies at
12 the national level and so we get the best support and best
13 information down to the commanders and our Servicemembers.

14 Q. And, sir, in that capacity what about information sharing
15 between the United States Government and foreign partners?

16 A. Certainly we worked a number of those processes as we
17 matured in both theaters at the time, both Afghanistan and Iraq.
18 There were some number of processes ongoing to mature our ability to
19 be able to share with the coalition of the day and those coalitions
20 changed over time and we wanted to make sure that that info sharing
21 continued as that coalition grew.

1 Q. So in reference to coalition, sir, what is at least the
2 difference, if any, between foreign partner information sharing and
3 coalition forces information sharing?

4 A. Yeah. I think the difference would be, you know, a
5 coalition is a team that comes together from a number of nations to
6 go after -- they agree to go after or work together to solve a
7 particular problem. That coalition has folks that move in and out of
8 that coalition. It often is not something that necessarily may stay
9 together when that problem set is gone. And so, you know, you've got
10 to understand the business, you've got to be nimble, you've got to
11 have some experience, and you've got to work through what often is a
12 new challenge constantly because this coalition might not have the 50
13 years of experience that NATO might bring in terms of an information
14 sharing arrangement.

15 In relationship with a foreign partner is a little
16 different in my mind in the sense that you're looking for more of a
17 long-term relationship between either military-to-military, be it the
18 US to the German military, or the UK military and that kind of stuff
19 where there's enduring relationships and you've created a long-term
20 partnership that's in the best interest of the two nations. And
21 those foreign partnerships then extend to the national level as well.
22 So you might have a national agency inside the United States that
23 creates a relationship with a national agency of a foreign nation.

1 So there's my distinction between a foreign partner and what would be
2 coalition operation.

3 Q. Sir, as the Deputy J2 of the Joint Staff, how did you
4 oversee and I guess operate within the DoD Intelligence operations
5 field?

6 A. Well certainly the J2 has the responsibility to be able to,
7 first of all, J2 is the Senior Intel Officer for the Chairman. So
8 he's responsible for informing the Chairman of the intelligence
9 picture. The J2 also has the responsibility to the Chairman as well
10 as to the Secretary to Defense and Under Secretary of Defense for
11 Intelligence, that those resources that the nation has given to the
12 services and to the Department of Defense to conduct intelligence
13 are, you know, being used properly, being used effectively and being
14 managed in a way that brings out the results that we need.

15 Q. And, sir, after your time as the Deputy J2 of the Joint
16 Staff, where was your next assignment?

17 A. At that point I was selected for brigadier general and I
18 took my first assignment as a general. I was the Senior Intelligence
19 Officer J2 at the European Command in Stuttgart, Germany.

20 Q. Sir, is this the United States Army European Command or the
21 combatant command?

22 A. This is the Combatant Command, the United States European
23 Command.

1 Q. What were your general responsibilities there, sir, as the
2 J2 for EUCOM?

3 A. So all of those responsibilities inherently come with being
4 a Senior Intelligence Officer for a four-star general. There was
5 approximate work force of about a thousand military personnel and
6 civilians that operated underneath the J2. It's a very mature
7 theater, both in terms of information access as well as
8 dissemination. Then we, at the time, the Africa Command had not been
9 created so we had Department of Defense Intel responsibilities for
10 about 90 plus countries throughout Europe and Africa.

11 Q. And, sir, in that capacity as the J2 of EUCOM, what was
12 your experience of information sharing within the United States
13 Government?

14 A. So a number of areas. In particular you're always
15 concerned with force protection and whether you have a number of
16 forces that were down on the African environment training and
17 educating and building relationships, partnerships down in that
18 environment. You were always wanting to make sure that you had full
19 awareness of any threats that might exist. So you had to work within
20 the many other arms of the U.S. Government to ensure that information
21 flow was getting into the proper channels to support those troops.
22 You, at this time, there was certainly a number of concerns over
23 force protection threats within the environment and Europe and one of

1 the big ones was the IJU case in Germany where the Islamic Jihad
2 Union was threatening to go after Ramstein and that particular case
3 was solved during my tenure there and it was an incredible
4 information sharing environment between the foreign governments,
5 being the German Government, the US FBI, and other Intel agencies
6 that needed to come together and cooperate so that we could protect
7 US families and Servicemembers from this particular threat that was
8 developing there in Germany.

9 Q. So, sir, a moment ago you also talked -- you mentioned or
10 testified about information flow down to the supporting troops in
11 Africa, what do you mean by that, sir?

12 A. Well, what I mean is that, you know, if an Intel system
13 picks up a threat or a force protection concern about a particular
14 location or a particular individual or a particular unit that may be
15 operating somewhere, it's incumbent upon Senior Intel Officers to
16 put the processes in place so that the data can move to the commander
17 they can make the right decision to take protective steps and
18 mitigate the risk, at the same time attempt to continue to accomplish
19 his mission.

20 Q. Sir, so that's information sharing within U.S. Government.
21 It sounds like you also, if you agree, testified about information
22 sharing with foreign partners with your example?

1 A. That was one example. Another example was when Chad almost
2 crumbled in the -- I can't remember whether it was 2007 or 2008
3 timeframe, but Chad almost crumbled and we had American citizens in
4 that country. We had a lot of French citizens, the French had a lot
5 of responsibilities. And we had to go to some extraordinary
6 measures to create the right information sharing environment with the
7 French Government so that we both had a common understanding of what
8 was going on and this small number of personnel that were on the
9 ground could easily support and protect each other. That was
10 actually quite an information sharing success. We worked with the
11 French, with the European Command, as well as other NATO partners to,
12 to ensure that Intel and that information was well-shared.

13 Q. Sir, after your time as the J2 of EUCOM what was your next
14 duty assignment as a flag officer?

15 A. I was then sent to Kabul, Afghanistan where I was dual-
16 hatted as the ISAF-J2, the NATO Command there as well as the US
17 Forces Afghanistan J2.

18 Q. What were your general responsibilities versus the ISAF
19 NATO J2?

20 A. Again, you're the Senior Intel Officer for the four-star
21 commander there so you have all of those responsibilities to ensure
22 the Intel system is working, legal, and ensure it's focused on the
23 proper priorities and the requirements of the command. You have

1 great responsibility in orchestrating the collection, overseeing the
2 analytical products and to make sure, especially in a war zone, to
3 make sure that the information flow is getting down to the commanders
4 on the ground that need that information. In this case it was also
5 trying to blend the NATO and the US networks to the fullest extent
6 possible and at the same time to bring in those coalition partners
7 because in addition to the NATO team that was in Afghanistan there
8 were a number of other countries that were not necessarily NATO that
9 wanted to join us in that particular effort. And then during my time
10 there and the folks that followed me certainly we have worked
11 incredibly hard to broaden that coalition and that information
12 sharing with our Afghan partners who ultimately need that support so
13 we can get out of there.

14 Q. Sir, you used two terms. If you could just define for the
15 Court, when you say Intel system, what do you mean, sir, as the
16 Senior Intel Officer overseeing the Intel system?

17 A. Yeah. We define that whole thing as Intel operations and
18 so you want to have the confidence that the entirety of the Intel
19 operation is operating effectively. I think because the Intel
20 operation is a series of practices and procedures and IT networks and
21 there's just, there's all kinds of systems in there. I think system
22 is my way of just describing all of the connections that take place
23 as you work through Intel processes.

1 Q. Sir, when you talk about Intel processes and connections,
2 are you talking strictly computer networks or are you talking about
3 also human interaction, could you explain that some more?

4 A. Yeah, in my mind I'm talking about, you know, the human
5 interaction that's necessary, the daily meetings and briefings that
6 need to take place, the various forums where you bring people
7 together to communicate and reach conclusions and then you have to
8 talk about the massive amount of networks and information systems. I
9 mean, the Intel community couldn't live without significant IT
10 capabilities and the ability to constantly acquire, to manage, and to
11 access that information in real time.

12 Q. Sir, in this Intel operation and system where do Intel
13 Analysts fall within that scope of what you are overseeing?

14 A. Most every, I won't say every, but most every Intel
15 operation and certainly those that are in what you would call the S2
16 or the J2, the Intelligence Officer in support of the command has a
17 number of analysts that span from the most junior person up to
18 perhaps your senior analyst that may have 20 plus years of
19 experience. And those folks are critical. They, they make value out
20 of all of this information that comes in. They have to understand
21 the environment that they're in. They have to understand the
22 questions that are important to a commander. And they have to be
23 able to gather data, put it together and tell a story.

1 Q. And, sir, when you also testified about Intel systems and
2 operations, you mentioned collection, what did you mean by
3 collection, sir?

4 A. Collection is the art of taking a system and gathering
5 information and an example of that would merely be an antenna, if you
6 put it out it's going to grab radio signals. Another example might
7 be a UAV. Another example might be sending a human source out to ask
8 for information from, you know, from a human. So the collection is
9 that art of how you go about acquiring the information that's
10 important.

11 Q. Sir, as the NATO/ISAF -- well, I guess, sir, how do you
12 distinguish between your responsibilities as the US Forces
13 Afghanistan J2 and the NATO/ISAF J2?

14 A. Yeah. So as the NATO/ISAF J2 my responsibilities included
15 providing the Intel function, the Intel knowledge, and the support to
16 subordinate commanders whether they were in the Italian operation out
17 in Western Afghanistan, whether they were the Dutch running the
18 operation in Kandahar, or whether it was the Germans up in Mazar-e-
19 Sharif, I had to make sure that system was supporting all of the
20 components of NATO that were out there. As the -- In doing that, I
21 orchestrated on the ground the resources that we had and a advocated
22 backup through to the NATO Headquarters for, for more resources or
23 processes or authorities and that kind of stuff. From a USFOR-A

1 standpoint, my job was to reach back into CENTCOM and my job to reach
2 back into CENTCOM was to help work with CENTCOM so we managed the US
3 processes in a way that nested with NATO so there was not overlap,
4 there was not duplication. We got the most benefit from those
5 resources that we were putting in there, and we did it in a way that
6 allowed that information flow to be of benefit to our coalition
7 partners and our NATO partners.

8 Q. Sir, what was the next -- what was your next duty
9 assignment after, I'm sorry, sir -- thank you, sir. What was your
10 next assignment after being the USFOR-A J2?

11 A. I came home from Afghanistan and then I took the position
12 we talked about at the very beginning, the Director of the Defense
13 Counterintelligence and HUMINT Center in the Defense Intelligence
14 Agency.

15 Q. Sir, that capacity as the Director of the DCHC, how did you
16 oversee DoD intelligence operations?

17 A. I didn't oversee all of DoD Intel operations but at that
18 point I was specifically overseeing defense HUMINT and
19 counterintelligence operations. And, you know, about 5,000 personnel
20 spread out around the globe.

21 Q. And generally speaking, sir, in an unclassified manner,
22 what type of personnel; are these analysts, collectors? What are
23 they, sir?

1 A. It was a combination of reporters, analysts, collectors.
2 They ran, you know, from various levels, very junior to very senior
3 folks, experienced and then but generally you're looking at a
4 management layer and reporters, collectors and analysts.

5 Q. And, sir, in that capacity as the -- in your last active
6 duty job in the Army and the DIA, what about your experience or your
7 duty with information sharing within the United States Government?

8 A. On a number of levels. Information sharing in the HUMINT
9 world is one of the most complex and one of the most difficult to
10 work through. Folks that run HUMINT operations have a relationship
11 with their sources. They have an obligation to protect their
12 sources. And in many cases sources that work in, you know, at their
13 own peril and at their own risk. So the HUMINT world is one of the
14 most difficult to work through that information sharing because you
15 really have that personal connection to protect your source and
16 protect your ability to do this function. So we have a lot of
17 experience in working through how do we integrate the entire DoD
18 system and it's an evolutionary process. You can imagine that it's a
19 very similar situation when you get into the counterintelligence
20 arena. Counterintelligence borders the law enforcement area as well
21 as working that particular counterintel against an adversarial
22 intelligence agency and you can imagine the secrecy associated with
23 trying to protect your investigations and that kind of stuff. Part

1 of that job and that information sharing within the U.S. Government
2 is to make sure that, you know, that law enforcement seam could be
3 bridged to the Intel community for force protection support, as well
4 as to make sure that, as you had one service working on a
5 investigation that there was not data contained in there that might
6 help another service and it wasn't being shared. So we were often
7 working through various forums and panels and groups to bridge those
8 service investigatory processes and to work, to protect the
9 Department as a whole from not sharing information to the fullest
10 extent.

11 Q. Sir, as the Director of the DCHC at DIA what about your
12 experiences, sir, with intelligence sharing with foreign partners
13 then also of course with coalition forces?

14 A. Yeah. So probably in a number of areas. Number 1, in that
15 position I had elements that were deployed in both war zones, and so
16 those folks, although they worked at the direction of the U.S.
17 Government, it was their responsibility there to ensure that as they
18 went through their processes they were sharing information with the
19 U.S. Command that would enable and assist the coalition or the NATO
20 structure that was in place. In addition the Defense
21 Counterintelligence and HUMINT Center oversaw the attaché program
22 and, of course, as you may well be aware, attachés are positioned
23 within the embassies across the world and their job is to develop

1 those relationships with Ministry of Defense and defense elements and
2 other nations and our foreign partners and, of course, that requires
3 an element of information sharing, of conversation and being able to,
4 you know, develop that relationship by getting common understanding
5 and working through information sharing.

6 Q. Sir, in your role as a Director of the DCHC, what was your
7 role actually with the Defense Attaché Office and ultimately all the
8 attachés?

9 A. I was -- I had an individual who ran the program for me. I
10 think I rated a number of attachés throughout the world as their
11 senior rater, you know, hundreds of them that I was involved with
12 rating. I would work to oversee and put processes in place that
13 supported them, whether they were in times of crisis in Syria or
14 whether they were working through issues in Japan with the nuclear
15 stuff. I had to overlook for their safety and then ensure they were
16 well taken care of and to ensure that the processes in place allowed
17 their activities to go to the full goodness of the Department of
18 Defense.

19 Q. Sir, were you in charge of the entire Attaché Corps?

20 A. You know, I don't recall whether I was actually designated
21 as the Director of the Attaché Service.

22 Q. Yes, sir.

1 A. But I had subordinates that oversaw that program for me and
2 at the end of the day it, you know, it ran right through -- right
3 through me before it went up to the Director of DIA.

4 Q. Thank you, sir. Sir, before we continue with your
5 background, could you please explain to the Court kind of generically
6 what -- how the military intelligence, DoD Intelligence, system
7 overall is broken down through the tactical operational strategic
8 levels?

9 A. It's large, it's complex, it's very technical. It has
10 probably some of the finest Servicemembers in it. It, at the top
11 level it begins with some big agencies that have split
12 responsibilities, both to the Department of Defense and to the
13 national community and I refer to things such as the National
14 Security Agency or the National Geospatial Agency.

15 Q. Is that the strategic level, sir?

16 A. That would be -- That would be the strategic level. But it
17 would -- It would -- Because of those organizations having
18 responsibilities to support the military war fighter and certainly
19 when U.S. Forces are in harm's way and people are at the risk of
20 dying, we expect those agencies to do everything they can within
21 their power to move the right information down to protect our forces.
22 Then all of the services and the combatant commands have a layer, the
23 combatant commands are what I'd say are under that operational level

1 of intelligence. Then the services have a layer of intelligence as
2 well responsible for training personnel to work in the joint world,
3 responsible for getting the processes in place for their tactical
4 capabilities. Then each of the services have their aspect of what
5 might be referred to a tactical intelligence mission to support their
6 service specific commanders. In some cases a particular service may
7 bring a capability to the Department of Defense on behalf of the
8 whole Department because the expertise is there. You know, you
9 wouldn't want the Army to do a acoustics intelligence under water, I
10 mean, the Navy could do that best for the nation. So it is a very
11 complex process that's layered and has to work together in a, you
12 know, one might hope a seamless environment and then all the
13 information is shared collaboratively and gets to the right. This
14 didn't happen overnight. If you can go back in the history books,
15 you can go to the Vietnam era and you can see many examples of when,
16 you know, we wanted to move more Intel, but how do you take that
17 national capability, how do you take that wealth of the nation and
18 that capability that you've invested in and how do you make sure you
19 defend that last Soldier that's out there facing the enemy. And so
20 after Vietnam we started moving down this trail. We started building
21 these tactical Intel capabilities. We started empowering our forces
22 so that they would have the information they needed to win on the
23 battlefield. And you got to Desert Storm and you could see it. All

1 of a sudden, it became more digital and you could really see, not
2 that it all happened perfectly there, but you could see the art of
3 where you could go. And then for the next decade or so we moved
4 forward again and then as we got into Iraq and Afghanistan it was
5 like, it was like an explosion of how we can really provide the best
6 Intel in the world to support our Soldiers on the battlefield.

7 Q. So, sir, in that explanation where does a uniformed
8 enlisted analyst fall? Is it only at the brigade tactical, lowest
9 level tactical, the lowest tactical level?

10 A. You know, they fall throughout that -- throughout that
11 layer. Certainly a young enlisted Intel specialist is going to learn
12 the tools and the trade craft and the capability to work down at that
13 lowest level, be it, you know, in some cases it's down to the company
14 now but typically it was at the battalion. You certainly will see
15 those populate inside the brigade. You'll see it in Intel Companies
16 that might rest within a brigade and you'll see them on Intel
17 Battalions scattered throughout the battlefield. But you'll also
18 have junior enlisted Soldiers that work in a Division Headquarters
19 they'll work in a Corps Headquarters. And even I sitting back at
20 Fort Gordon, as I oversaw signals intelligence operations, the
21 overwhelming majority of my Servicemembers that were working, you
22 know, foreign languages in Iraqi and Pashtu and all of this, these

1 are young Soldiers, the E1 to E4. Most of them, many, many of them
2 on their first tour of duty.

3 Q. Thank you, sir. Sir, what military training have you
4 received to become an Intelligence Officer? What was your first
5 training course?

6 A. Military Intelligence Officer Basic Course.

7 Q. And then what advanced training?

8 A. Military Intelligence Officer Advanced Course.

9 Q. Any other formal military training to -- that led you to as
10 a Senior Intelligence Officer within the Department of Defense?

11 A. General officership you get into the Command and General
12 Staff College, you get into the U.S. Army War College. And then, you
13 know, over the years at various times I would go to 2 or 3-week
14 courses that might, you know, focus me on or give me some additional
15 information in certain area. For instance, you know, the Basic
16 SIGACT Course, Electronic Warfare Course. The Indications and
17 Warnings Course that was run. The Senior Cryptologic Officers
18 Course. So various courses scattered throughout the career.

19 Q. And in general, sir, well I think you already answered,
20 sir, what type of training that consisted of by giving those
21 examples. What about your civilian education? What civilian
22 education do you have outside of the military?

1 A. Bachelors of Business Administration with an emphasis in
2 accounting. Graduate degree, Master's Degree in Public
3 Administration with an emphasis in comptrollership from University of
4 Missouri and then as part of the War College I took a master's
5 degree. I think it's a Master's Degree in Strategic Studies or
6 something along those lines.

7 Q. And, sir, based off of that training and then your previous
8 assignments, what year do you estimate that you started being
9 involved full time with information sharing within the U.S.
10 Government?

11 A. I believe that that would be 1993 when I was the S2 for the
12 Army Brigade in support of the National Security Agency and that's
13 really when I got into understanding how do we take data and
14 information at the national level and get it out to the forces that
15 we had. So 1993 would be what I think is my first real exposure to
16 that.

17 Q. What about your first real exposure, sir, with sharing
18 information with foreign partners and coalition forces?

19 A. Yes. At a lower level that actually started in Germany
20 back in the 1985 to '89 timeframe. I happened to be in the brigade
21 that was in the NATO sector so most of our, most of our training
22 operations had French or Belgium or German or British components to
23 it. And so at a low level as a captain it started then. Probably

1 again in the '93/'95 timeframe when I was at NSA I began to get more
2 exposure to that how do you work with foreign partners with info
3 sharing.

4 Q. Sir, have you received any significant awards for your work
5 in the intelligence and coalition operations area?

6 A. I've been recognized with various medals and for each
7 assignment out there as well as a culminating award on retirement and
8 also received a couple of distinguished awards from the ODNI, both
9 for the culmination of a career as well as my directorship of the
10 IRTF.

11 Q. And so, sir, starting with those two ODNI awards, what is
12 ODNI?

13 A. Office of Director of National Intelligence. It's the
14 cabinet level organization that oversees the United States Intel
15 community.

16 Q. And what awards did you receive from them, sir, or from the
17 DNI?

18 A. I don't recall their exact names. I apologize. But, you
19 know, as part of the IRTF, the IRTF as a whole was given a
20 substantial award for their effort. Then at my retirement ceremony,
21 the ODNI came in and gave me one of their senior distinguished awards
22 for, you know, a career supporting the Intel community.

1 Q. And, sir, we'll get to this later, but just briefly, what
2 is the IRTF?

3 A. The IRTF is the Information Review Task Force.

4 Q. And in general, sir, what was the IRTF?

5 A. It was the effort that the Secretary of Defense put
6 together that I led after the first release of the WikiLeaks
7 materials, that was the effort to understand that and to identify the
8 risk and to begin to mitigate the effects of that.

9 Q. Thank you, sir. Sir, have you ever taught in the field of
10 intelligence?

11 A. I have. Upon, upon retirement I was approached by
12 Georgetown University and I do teach a course at Georgetown
13 University in their master degree program and national security
14 studies. I teach a course on defense intelligence.

15 Q. And in general, sir, what is that, kind of the purpose or
16 focus of that course?

17 A. Yeah. The focus of that course is to take Georgetown
18 students working toward their master's degree and understanding
19 national security affairs to appreciate the magnitude of the defense
20 intelligence system, what's out there and to help them understand the
21 issues associated with the Intel community, the Defense Department
22 and working within the national Intel structure.

1 Q. Sir, prior to your retirement and taking on that adjunct
2 professorship, did you also ever teach or lecture in the field of
3 intelligence over your military career?

4 A. Certainly gave a number of briefings, a number of
5 professional development sessions to junior officers over the years
6 or NCOs. But I managed not to, I tended to stay operational and not
7 go into the schoolhouse to teach.

8 Q. Yes, sir. Sir, have you ever testified in a court-martial
9 as an expert in the field of DoD intelligence -- oh, have you ever
10 testified in a court-martial at all, sir?

11 A. I think my only testimony in a court-martial was as the
12 commander once or twice I had to come in and provide testimony as the
13 commander of a particular Servicemember.

14 Q. And, sir, when you did testify that once or twice, was it,
15 were you testifying in the field of, as an expert in the field of DoD
16 intelligence operations?

17 A. No, I was merely there as the commander.

18 Q. Okay, sir. And, sir, have you ever testified before
19 Congress?

20 A. Many times.

21 Q. And have you testified before Congress based on your
22 expertise in the field of DoD intelligence operations?

23 A. Absolutely.

1 Q. And what about in the field of intelligence sharing within
2 the United States Government?

3 A. Absolutely.

4 Q And also intelligence sharing with foreign partners and
5 coalition forces?

6 A. Yes, very much.

7 Q. And approximately, sir, how many times do you estimate
8 you've testified before Congress on these subject matters?

9 A. I don't know an exact number. It exceeds 10, it's less
10 than 100.

11 Q. Now, sir, when you say testify, are you also including
12 meeting with congressional staffers and Congress persons?

13 A. So testifying to me is sitting behind a table in front of a
14 committee that's been called to order and you're answering questions.

15 Q. Okay, sir.

16 A. I've done that for a number of the committees, more in a
17 closed session than in an open session because of the topics.
18 Probably done that, you know, half a dozen times or so. Having met
19 with smaller groups of both members and staffers, you know, another
20 couple dozen times.

21 Q. Sir, was this testimony related to your expertise, as I
22 asked before, in the DoD intelligence operations field?

1 A. Yes. Most of them that I recall had to do with, you know,
2 being the Intel expert sitting as part of a particular team, either
3 on Iraq, Afghanistan or, you know, HUMINT operations in general or a
4 particular scenario response to a particular scenario or crisis that
5 might be ongoing somewhere in the world.

6 Q. Sir, were you ever relied upon for your expertise to
7 testify in matters of the impact based off of the WikiLeaks
8 disclosures and PFC Manning's conduct?

9 A. I was.

10 Q. Could you briefly explain overall how many times that you
11 can remember and the general subject matter? I understand we're in
12 open session, sir.

13 A. Again, testifying in front of committees on WikiLeaks
14 issue, maybe four or five times. And then meeting with certain
15 members or staffers in smaller sessions that were not necessarily
16 what, you know, official on-the-record testimony, probably another
17 half a dozen times.

18 Q. Sir, have you ever given your expert opinion relating to
19 intelligence matters to senior officials within the U.S. Government?

20 A. Every day the J2 briefs a four-star general, he's on the
21 line and he's on the hook for, you know, providing the best expertise
22 that you can at the time.

1 Q. And then what about, again, very generically, sir, because
2 we'll get into more of this later, what about in terms of your role
3 as overseeing the IRTF and doing the mitigation and damage
4 assessments related to this case?

5 A. Describe that role or have I ever had to give an opinion?

6 Q. Have you ever given an opinion; yes, sir, have you ever had
7 to give an opinion?

8 A. In many times I've had to -- for a period of time there I
9 was briefing senior officials almost on a daily basis. In some
10 cases, you know, receiving briefs and then participating in briefs
11 the more senior. And certainly I've briefed this particular issue to
12 a number of senior folks both in the Pentagon as well as in other
13 places of the U.S. Government that would impact it.

14 Q. Sir, when you say senior officials, although I know I asked
15 the question about senior officials, who are you talking about in
16 general?

17 A. You know, as a matter of routine you're talking about, you
18 know, a layer or two down from the Secretary of Defense kind of on a
19 daily go. Certainly had to brief the Under Secretary of Defense for
20 Intel. Certainly had to brief the J2, the Chairman, and on one
21 occasion I had to go in personally with the Sec Def.

22 Q. Sir, have you ever represented the Department of Defense or
23 DIA on intelligence matters with foreign governments?

1 A. Yes.

2 Q. Can you in a generic way explain that for the Court and
3 explain how you've had to represent the United States in that regard?

4 A. You know, in numerous opportunities as the J2 in EUCOM I
5 was the Senior Defense Intel person there in the theater and, you
6 know, had to very often engage with the Senior Intel Official of
7 Romania, Poland, Turkey, as we worked through how we would develop
8 relationships, how we would do info sharing, where we would, you
9 know, better create our relationships and our partnerships.

10 Q. Thank you, sir. Then, sir, your overall capacity in your
11 past 31 years have you had experience with Intel Analysts with junior
12 enlisted Intel Analysts providing, performing their duties within the
13 DoD intelligence community?

14 A. Absolutely. I often say that I can almost go back to every
15 assignment and the success that I may have enjoyed in those places
16 and I can often look to a young junior Servicemember who, given the
17 right tools, given the right information, given the right opportunity
18 often created a game-changing moment or a game-changing effort. I
19 can, I can recall events like that in Afghanistan. I can recall
20 events like that at Fort Gordon. I can tell you that young Intel
21 Analysts in Bosnia made discoveries and analytical judgments that
22 commanders accepted that were game-changing in our ability to
23 transform the Bosnia environment. It is hugely important to empower

1 these young Intel Analysts and let them have everything they can to
2 make a difference. And more times than not, they will truly shine.

3 TC[MAJ FEIN]: Thank you, sir. Your Honor, the United States at
4 this time moves to offer Brigadier General Carr as an expert in DoD
5 intelligence operations and intelligence sharing with the United
6 States Government and with foreign partners in coalition forces?

7 ADC[MAJ HURLEY]: Ma'am, we anticipate making an objection to
8 his -- to General Carr's expertise and we'd like to do voir dire in
9 support of the objection. Could we first take a break?

10 MJ: Yes. I'll withhold ruling on this until I hear the
11 defense's voir dire of the witness. How long of a recess would you
12 like?

13 ADC[MAJ HURLEY]: 10 minutes is fine.

14 **[The witness was duly warned and withdrew from the courtroom.]**

15 MJ: We will be recessed then for 10 minutes.

16 **[The court-martial recessed at 1115, 31 July 2013.]**

17 **[The court-martial was called to order at 1131, 31 July 2013.]**

18 MJ: Court is called to order. Let the record reflect all
19 parties present when the Court last recessed are again present in
20 court. Major Hurley?

21 ADC[MAJ HURLEY]: Yes, ma'am.

22

1 VOIR DIRE OF MAJOR GENERAL CARR

2 Questions by the assistant defense counsel [MAJ HURLEY]:

3 Q. General Carr, I just remind you you're still under oath.

4 A. Yes.

5 Q. General Carr, as you indicated with the Government you
6 never testified as an expert before in a court-martial?

7 A. Only testified as a commander, yes.

8 Q. So as a fact witness?

9 A. Yes and character witness. That kind of stuff.

10 Q. You have testified before in your intelligence capacities
11 before Congress?

12 A. I have.

13 Q. Were you qualified as an expert? When I say qualified,
14 were you asked questions by the committee's members to establish your
15 bona fides as an intelligence expert?

16 A. I don't think they went through a process specifically to
17 validate me in that regard. There was certainly some questions that,
18 you know, asked as to my background and what basis I might have come
19 to them in brief. I think a selection was more by either the Defense
20 Intelligence Agency or by the Joint Staff who decided that I would
21 represent the Chairman in front of that particular panel.

22 Q. It was a function often of your duty position, correct?

1 A. More cases than not, it was a function of my duty position
2 but at the end of the day in most cases the Chairman is the person
3 that's summoned to Congress and then he makes the selection on who is
4 the best expert on the staff to represent him for a particular topic.

5 Q. So when you went to Congress and testified did you
6 introduce yourself as an expert?

7 A. No, I introduced myself as who I am and the position that I
8 was there and why I was there.

9 Q. And so you never, before today, introduced yourself as an
10 intelligence expert in DoD intelligence operations.

11 A. I don't know that I've personally introduced myself in that
12 way. I know I've certainly stood up for speeches and stood up in
13 various forums where those that were hosting introduced me that way.

14 Q. Were you ever introduced as an expert in information
15 sharing inside the United States Government?

16 A. Not sure I've been introduced in that particular way. I've
17 certainly been brought before a number of different forums where
18 information sharing was the key topic of interest and a discussion
19 point for that particular event.

20 Q. Ever held yourself out as an expert in information sharing
21 within the United States Government?

1 A. On a personal level, I've never stood up and professed that
2 but I've often been put in the place where I was asked by the seniors
3 to be the key representative of a particular ----

4 Q. I'll have the same questions for the other areas of
5 expertise. Ever held yourself out as an expert in information
6 sharing with foreign partners?

7 A. You know, again, I don't know that I would probably get up
8 on a public stand and cheerlead and say that's the case but
9 significant experience in doing it and didn't shy away with it and
10 was more than prepared to meet the functions that were required in my
11 duty positions to execute those functions.

12 Q. Last one, ever held yourself out as an expert in
13 information sharing within coalition operations?

14 A. Again, I don't know that I've ever done that on a public
15 platform but, you know, at some point in time when I retired there
16 probably wasn't too many people that have had as much experience in
17 doing that.

18 Q. There are other people with similar levels of experience
19 though; is that right, sir?

20 A. There certainly are today.

21 Q. Yesterday we had a conversation, do you recall us talking
22 in the witness trailer, sir?

23 A. Yes.

1 Q. And you indicated that other intelligence general officers
2 would have a similar level of expertise?

3 A. I think other U.S. Army Intel officers at the general
4 officer level that have had the common set of experiences that I've
5 had would have the same level of expertise. I don't think that
6 general officers or flag officers in the other Intel services
7 necessarily have that same experience that the U.S. Army has had as a
8 result of the positions and the placements and the functions that we
9 often perform on the battlefields.

10 Q. So by your answer, you would neck that group of people down
11 to not just Intelligence GOs but Army Intelligence GOs?

12 A. My personal opinion is that in those areas that you
13 mentioned, Army Intel general officers tend to have more experience
14 and expertise in those areas.

15 Q. Do they hold them -- Have you ever met anyone that held
16 himself or herself out as an expert in DoD intelligence operations?

17 A. I've certainly not only heard myself but I've heard others
18 be introduced at various forums where they were acknowledged by the
19 organization that was hosting them and asking them to speak as, you
20 know, experts in defense intelligence operations as a result of their
21 participation in a particular event or crisis or war zone.

22 Q. So you never heard anyone say, I'm an intelligence, I'm an
23 expert in Department of Defense intelligence operations?

1 A. I don't know that I've ever heard anyone say that.

2 Q. Can you recall?

3 A. I can't recall the exact spot that someone might have said
4 that.

5 Q. Have you ever, we'll go with all the info sharings and I'll
6 ask them all at once. Have you ever heard someone say, hi, I'm an
7 expert in information sharing within the United States Government,
8 with foreign partners, or with coalition forces?

9 A. I have. And the art of policy and disclosure is in fact a
10 functional field and there are people that have applied that trait
11 for a long period of time.

12 Q. Have you worked with these individuals, these individuals
13 that hold themselves out as experts?

14 A. I have on occasion.

15 Q. Are you familiar with what facts and circumstances they --
16 the facts and data, I'm sorry, not facts and circumstances, facts and
17 data they use in applying their expertise?

18 A. Regulatory guidance and I guess in some cases there's
19 probably some law out there, but regulatory guidance on law and then
20 it's the question of experience. I mean, in some cases as the J2,
21 wherever you are, and certainly in the bigger J2 positions, you're
22 going to find folks on your staff that have some training in this
23 particular area. And you supervise them and you lead them.

1 Q. So, just to sum up. The sufficient facts or data that
2 you're aware of would be regulatory guidance, legal guidance, or just
3 the law itself and their experience. Is that right?

4 A. When we're talking about the folks that I mentioned, the
5 type of folks that might be on your staff as the lead individual for
6 policy I think that's probably a pretty good one.

7 Q. Right. I'm sorry to interrupt you, sir, but it's
8 important. I'm not talking about those people. I'm talking about
9 the people that hold themselves out as experts in information sharing
10 within the United States Government with foreign partners and with
11 coalition partners. That's who I'm talking about.

12 A. Well, again, who are these people that actually would hold
13 themselves out? You know, if I were to want to say I'd hold myself
14 out that way, I would be looking at things that, you know, you had
15 experience, you've successfully applied it and perhaps more
16 importantly you've done it in a way that hasn't caused, you know,
17 wrongdoing and you've been able to apply that knowledge at an expert
18 level where you have created solutions that allow us to get to
19 success. At the end of the day most -- a lot of this, again, the
20 difference between a NATO environment that evolves over a long period
21 of time and a coalition, a coalition often has to come together very
22 fast.

23 Q. Right.

1 A. It takes people who understand the left and right
2 boundaries that can form ideas together and create solutions that
3 allow us to be successful.

4 Q. Okay. Sir, I apologize, I'm confused by your answer. My
5 question is this: Experts in the field of information and sharing
6 inside the United States Government, information sharing with foreign
7 partners and with coalition forces what -- do you know what facts or
8 data they would use to make the determination, to make their
9 opinions, their expert opinions?

10 A. I don't know that that answer is the same for every
11 organizational structure. I would say that a particular national
12 agency would have an office where a group of people that would
13 oversee their foreign partner relationships. Their expertise and
14 their guidelines would be based on a full understanding of the
15 capabilities and the limitations of their particular organization. A
16 full understanding of the intent by the leadership of the
17 organization and the U.S. Government as to what they need to
18 accomplish. An understanding of what the laws or the particular
19 policies and regulations. And then they would have to apply those
20 three things to create the answers and the solutions that would
21 suffice to be at the expert level.

1 Q. Yes, sir. And that's a -- that's a -- you're surmising
2 that, right, you're just -- you're using your expertise and you're
3 saying, well, this is what I would do, right?

4 A. Well, that and I've watched people do it and I've done it
5 myself.

6 Q. So you, you do know what facts or data are used by experts
7 in those fields that we're talking about, info sharing?

8 A. I cannot cite you the exact regulatory number or all of the
9 policy statements that are out there but I think I can explain the
10 thought processes, what would go into that equation as they attempted
11 to apply their expertise.

12 Q. Right. These other experts we're talking about, not your
13 expertise, these other experts?

14 A. Right.

15 Q. So you've made opinions with respect to the disclosures in
16 this case. Is that correct?

17 A. I have. I've made judgments and ----

18 Q. Okay. With that, I don't want to get into specifics of
19 those opinions or judgments yet. Did you make those judgments
20 considering the type of information that is normally considered by
21 experts in DoD intelligence operations and in information sharing?

22 A. I think there are ideas that come from those two bodies of
23 knowledge but I think it was blended with a number of other things

1 that had to do with the environment, the situation, and then coming
2 to a comprehension of basically something that had not been witnessed
3 before, had not been experienced before and so, you know, there
4 wasn't really a playbook. You had to put your knowledge, your
5 expertise together and come to those judgments with this new
6 situation.

7 Q. But, sir, there are -- there's a normal process that one
8 would go through, would you agree with that?

9 A. There was nothing about WikiLeaks that was normal.

10 Q. Well there's a normal process that you go through when
11 you're addressing a problem set. A There's certain problem solving
12 methodologies and we get trained on that kind of stuff, sure.

13 Q. As you went through and rendered these expert judgments, is
14 this the type -- are the expert judgments that you've rendered based
15 on the information that are normally considered by other experts?

16 A. I'm not sure I completely follow your question there but
17 what I, you know, I didn't lock myself in a room and come up with
18 these conclusions. I had a fairly significant staff of analysts.
19 Some of them were skilled in information sharing. Some of them were
20 skilled in counterintelligence. Some of them were skilled in just
21 general Intel analysis. Some of them were skilled in the operational
22 art. And so they all provided knowledge to me and I guided them as
23 we reached conclusions.

1 Q. All right, sir. We'll move on. Have you shared any of
2 these opinions and judgments with the other experts in DoD
3 intelligence operations and information sharing, the other experts
4 that you know of, have you shared your personal conclusions and
5 judgments?

6 A. Certainly as I was going through the process of being the
7 Director of the IRTF, I had to share my thoughts and the
8 implications, if not on a daily, maybe an every other day basis with
9 folks that I considered experts. For instance, the person who was
10 the J2 in the Central Command, I would put him in, you know, as an
11 expert, and I certainly worked with him.

12 Q. I'm sorry, sir, I misspoke. The opinions that you have now
13 in 2013, these opinions and judgments, have you gone back and shared
14 those with any of the other experts that you know of, the people that
15 you would consider experts?

16 A. I haven't talked to any of those folks since I retired. I
17 certainly haven't talked to them about this particular case.

18 Q. Did you ever -- As you -- You gathered the facts and the
19 data that you used, right? Because you based your judgments and
20 opinions on facts and data, correct?

21 A. **[Nodding head indicating and affirmative response.]**

1 Q. As you gathered that together, did you ever try to come up
2 with alternative explanations for the facts and data that you were
3 presented with?

4 A. Certainly tried to come up with competing analysis and look
5 at other opportunities and, you know, whether you could discount
6 something or whether it needed to be a second opinion perhaps just a
7 lower confidence level, but certainly couldn't be overlooked.

8 Q. Did you ever turn to these other experts that you know of
9 to try to come up with alternative explanations for these facts?

10 A. At the time when I was in the IRTF, I ---

11 Q. Yes, sir.

12 A. ---- I did.

13 Q. And they would provide you their insights based on their
14 own experience?

15 A. Yes.

16 Q. When we talked yesterday, one thing you indicated in your
17 talk was as you looked at the data you received you took it at face
18 value. Do you recall telling me that?

19 A I don't remember that exact term but can you put it in
20 context there for me? Help me out a little bit?

21 Q. Sir, of course I can. You would get information, whatever
22 it is, and you wouldn't question the information that was contained
23 in there, you would take that information for what it said on the

1 piece of paper. It was what it was. You took that information at
2 face value. You didn't dig deeper on the information that you
3 received to see if those facts were really accurate or not is what
4 I'm saying?

5 A. Yeah, I'm not, you know, I'm not sure I would agree that
6 all cases or all data that came in was of equal significance. If you
7 were referring to a spot report or a significant activities report
8 off the battlefield, I never picked up the phone and called the
9 battlefield commander and asked to, you know, explain that. I will
10 tell you that I did ask my staff on more than one occasion to explore
11 and make sure we understand that because the way it's written it
12 might have one meaning or another meaning. And I asked my staff to,
13 you know, continue to work through and make sure that they had a
14 clear understanding. Same thing with other impacts that might have
15 been out of the attaché world or something. I didn't personally go
16 back and do that.

17 Q. With those -- If there was an area for interpretation you
18 would push back. But if you got the report you never questioned the
19 validity of what was in the report, you used this data in the process
20 of performing your job as a Director of the IRTF or in whatever way
21 it was appropriate you thought at the time?

22 A. If the data didn't present itself in a way that caused me
23 to question its validity, I accepted it and moved on. I think all of

1 us get presented data, certainly in the Intel community you're always
2 looking at data and wondering its validity. It's part of the Intel
3 business. But if I didn't question it, no.

4 Q. Sir, I've talked a couple of times about our conversation
5 yesterday. Yesterday we talked about intelligence priorities. Is
6 that right?

7 A. We did.

8 Q. And we talked at length about intelligence priorities,
9 didn't we?

10 A. We did.

11 Q. And that was because the Government had listed you as an
12 expert in intelligence priorities?

13 A. I don't know if they did or not. We didn't discuss that
14 this morning. When I walked into the room with you yesterday for the
15 first time I had heard the word intelligence priorities being used in
16 this context or question of expertise.

17 Q. Yes, sir. And we also talked about coalition operations,
18 do you recall that conversation?

19 A. We did, we did.

20 Q. But you're not being offered by the Government as an expert
21 in coalition operations?

22 A. No, I think what, Your Honor, I don't know exactly the
23 term, I don't recall it. I think it had to do with coalition

1 information sharing as opposed to coalition operations, which is a
2 different art.

3 Q. Sure. So those are distinct categories?

4 A. I think they're related but in my opinion they are
5 distinct.

6 Q. So, sir, let's talk about these areas of expertise.
7 Department of Defense intelligence operations, that's a broad area
8 you would agree, right?

9 A. It is.

10 Q. And it contains many sub -- if this was the broad topic,
11 DoD intelligence operations, there would be many sub-bullets that
12 would go directly underneath Department of Defense intelligence
13 operations?

14 A. Correct.

15 Q. What would some of those sub-bullets be in a broad and
16 unclassified sense?

17 A. Analysts, analytical reporting, dissemination, collection,
18 vetting and then you could go through a series of functional areas,
19 counterintelligence, human intelligence, signals intelligence,
20 imagery intelligence. And you could go through the whole collection
21 cycle associated with the operation of each of those. At the end of
22 the day, someone who is working on a joint environment or the joint
23 command as the Senior Intel Officer has the responsibility and is

1 accountable for putting all of that together to effectively execute
2 the defense intelligence capabilities within that theater.

3 Q. Sir, wouldn't information sharing, whether it's inside the
4 United States Government or foreign partners, coalition forces,
5 wouldn't that be a subsection of DoD intelligence operations? I
6 mean, you've got to get the intelligence and then share it?

7 A. Yeah, I used the term dissemination there. But Intel
8 sharing and dissemination, they're perhaps not completely the same
9 but there is some overlap there.

10 Q. Right. But again it's a subset, so DoD intelligence
11 operations and then that's the subset?

12 A. Yes.

13 Q. Sir, have you ever acted as an original classification
14 authority?

15 A. I believe I have.

16 Q. All right.

17 A. It's not a common, it's not a common function, but yes, I
18 have in my capacity as Senior Intel Officer in European Command or in
19 a particular theater of operations.

20 Q. And those are identified by the Executive Order 13526,
21 right?

22 A. Yeah, it's not a -- it's not a very large group. It's
23 quite small.

1 Q. Before you were an Original Classification Authority, did
2 you ever have occasion to disagree with an Original Classification
3 Authority regarding their judgment on classified information?

4 A. I don't have a specific case that comes to memory but, you
5 know, I think over time, I don't know that you -- we often have
6 debates and in a way to try to get the classification of particular
7 information down to a level that you can get it to the people that
8 you feel most need it.

9 Q. Would you ever do that, that debate, would it be sort of an
10 internal debate with the person who was the original classification
11 authority for the information?

12 A. Normally it would be really between representatives of a
13 particular organization.

14 Q. Right. Very limited. You would never disagree publicly
15 with an original classification authority regarding his or her
16 judgment on classified information?

17 A. I don't know that I've ever got up at a town center and
18 made a cry, I disagree. But certainly I have over VTCs or over
19 various, you know, in forums, you know, argued or advocated for a
20 particular case that I needed something to access the information.

21 Q. Would you do it as a witness in this case, would you review
22 a document and say this doesn't need to be classified as a witness
23 sitting in that chair in this forum?

1 A. I don't think that's necessary in here today. I don't
2 think that that's what I'm asked to do but ----

3 Q. Would you ----

4 A. And I don't know that I would necessarily have all of the
5 references that I might need to make that judgment.

6 Q. Now, most of the assessments you're going to talk about,
7 when I say assessments, I mean opinions and judgments, you made these
8 assessments in 2011. Is that right?

9 A. In the period between 2010/2011, timeframe yes.

10 Q. Have you gone back to the original source material to
11 prepare for this trial to review these judgments to see if they are
12 still valid?

13 A. I have on one occasion gone back and spent probably 30
14 minutes scanning the final report that we signed out at the
15 conclusion of the task force. That's the only -- That's the only
16 thing I read. Let me rephrase. I did read the two-page memo that
17 was my guidance from the Secretary of Defense.

18 Q. Other than that, you haven't -- you didn't consider
19 anything in preparing for your trial today?

20 A. Certainly considered things in my mind but I didn't go grab
21 any particular documents or seek out any reading material.

22 Q. Let me correct myself, I said your trial, of course I mean
23 your testimony.

1 A. Thank you.

2 ADC[MAJ HURLEY]: You're welcome, General Carr -- may I have
3 just one second?

4 MJ: Yes.

5 **Questions continued by the assistant defense counsel [MAJ Hurley]:**

6 Q. With respect to your congressional testimony, did you have
7 a prepared statement? I know a lot of times congressional testimony
8 begins with prepared statements. Did you have one in any of the
9 times that you have testified, raised your right hand and testified
10 before Congress, not these informal meetings that you had with
11 members of your staffs?

12 A. Yeah. You know, I don't recall ever having to raise my
13 right hand. I mean, I was called to the table. We sat at the table
14 with the name in front of the microphones.

15 Q. Well, then in those situations, sir.

16 A. In most cases I don't think I had a prepared statement. I
17 was often the Intel rep on a group of two or three. So the lead of
18 the group, the operator, would often read the prepared statement, not
19 my statement.

20 Q. In your capacity as the Director of the IRTF, did you ever
21 have a prepared statement when you testified before Congress?

1 A. We did collectively have a prepared statement but I was not
2 the one that read the statement. The statement was read by someone
3 else that was part of the testimony team.

4 Q. Do you recall who else participated in this collective
5 prepared statement?

6 A. I don't have all the names from each time. I know ----

7 Q. Just a name you can remember?

8 A. I know in one case I went up with the, Mr. Tom Ferguson at
9 that time who was the Acting Under Secretary of Defense for
10 Intelligence. I know on one case I testified along with General
11 Clapper, the Director of National Intelligence.

12 ADC[MAJ HURLEY]: All right, ma'am, that's the end of our voir
13 dire. If we could lodge our objections at this point?

14 MJ: Go ahead.

15 ADC[MAJ HURLEY]: Thanks, General Carr. Ma'am, we would
16 object to this particular testimony in three ways: First, that the
17 expertise proffered by the Government is overbroad. Second, that
18 it's cumulative.

19 MJ: Cumulative to what?

20 ADC[MAJ HURLEY]: Cumulative, the DoD intelligence operations
21 and his information sharing inside DoD intelligence operations, those
22 are -- one is a subset of the other. So it, from the perspective of

1 the defense, ma'am, that could be cumulative bit of information or
2 cumulative expertise.

3 MJ: All right.

4 ADC[MAJ HURLEY]: Finally, ma'am, the testimony of this
5 witness as we have got through the voir dire it indicates that it
6 fails M.R.E. 702, it doesn't rely on sufficient facts or data. The
7 information is not applied to the problem in the correct way. Just
8 one second, ma'am. There's no evidence that the witness has applied
9 the principles and methods reliable to the facts in the case.

10 MJ: All right. Government? First off, start by addressing the
11 overbroad. What's the point in the expertise in, well, first of all,
12 do you agree that intelligence sharing with U.S. Government and
13 foreign partners and coalition forces is a subset of DoD intelligence
14 operations?

15 TC[MAJ FEIN]: Ma'am, it can be. The only reason I say it can
16 be because as General Carr testified prior to the voir dire that
17 intelligence information sharing within the U.S. Government is
18 broader than DoD. I think there is potential for significant overlap
19 in the fields of expertise but they're not -- one is not encompassing
20 of the other.

21 MJ: Okay. Why don't you address the defense objections.

1 TC[MAJ FEIN]: Yes, ma'am. First, Your Honor, the expertise,
2 ma'am, if I may testify from the table -- answer questions from the
3 table?

4 MJ: Go ahead.

5 TC[MAJ FEIN]: First, Your Honor, the expertise being overbroad.
6 The United States intends to ask General Carr about the impact -- to
7 ask him his opinion on the impact on the overall intelligence
8 operations of junior enlisted Soldiers disclosing classified
9 information and as he's testified that within the Department of
10 Defense intelligence system that there are junior analysts at all
11 levels from tactical to strategic level and in all function areas.
12 And that's where Intelligence Analysts are found. PFC Manning was an
13 Intelligence Analyst and we intend to ask him his opinion on
14 Intelligence Analysts committing these types of crimes and what
15 aggravating circumstances from that and potentially in the future.
16 So the United States, while it's not overbroad based off of the
17 crimes that PFC Manning has been convicted of. Cumulative of itself,
18 I think I answered that first, Your Honor, it's not per se cumulative
19 because one deals with information just exclusive within the DoD and
20 it's information centric. There's no question that DoD, Department
21 of Defense intelligence operations, does also include information
22 sharing within DoD. But General Carr is also going to explain -- The
23 United States intends to elicit his opinion on how information

1 sharing outside of the DoD with DoD information also was impacted
2 both within the Government and with foreign partners.

3 As far as the M.R.E. 702, excuse me, Your Honor, 702
4 objection, is that General Carr is first of all basing his opinion on
5 his specialized knowledge and training. He is relying on his 31
6 years of experience and his unique jobs both within the coalition
7 environment and within the Department of Defense as an Intel
8 professional. Based off of that, Your Honor, the facts he reviewed
9 in his official capacity and relied upon are sufficient with those,
10 within the field. Members of Congress relied upon General Carr,
11 senior U.S. Government officials relied upon General Carr, and that
12 is based off his experience and knowledge and the information he
13 reviewed and we'll get, assuming his expertise is granted, we'll get
14 to the exact information and the types of information he reviewed for
15 that opinion.

16 MJ: Yes.

17 ADC[MAJ HURLEY]: Ma'am, there's a lot to flush out what the
18 Government just said before I address it, I'd like to address it
19 first, before I do that, could we excuse General Carr for this
20 conversation?

21 MJ: All right. General Carr, once again, why don't you go
22 ahead and wait outside and don't discuss your testimony with anyone

1 while you're -- during the wait. Let the record reflect the witness
2 has departed.

3 **[The witness was temporarily excused, duly warned, and withdrew from
4 the courtroom.]**

5 ADC[MAJ HURLEY]: Ma'am, from the position of defense, what
6 the one area of the expertise was as we took note the impact that
7 flowed to junior enlisted Intelligence Analyst and it is the position
8 of defense, ma'am, that that opinion, however derived, allowing that
9 the Court allows him to get there that that doesn't relate to or
10 result from the accused's misconduct. That those individuals aren't
11 victims. So it's either the victims -- the victim prong, or the
12 command prong of 1001(b)(4), or the fill-in-the-blank prong of
13 1001(b)(4), because it specifically says -- it includes but isn't
14 limited to, and it's the position of the defense, ma'am, that that
15 testimony, here's how it affects all the individuals no matter where
16 they're found in the operation spectrum doesn't fit within
17 1001(b)(4).

18 MJ: So, you are saying that that -- Is it your objection that
19 the witness doesn't have the knowledge of that or is it your
20 objection that it's not unit aggravation?

21 ADC[MAJ HURLEY]: Ma'am, we have got to -- there are two
22 separate objections based on the proffer from the Government. The

1 first that the witness doesn't qualify as an expert under M.R.E. 702.

2 That's what ----

3 MJ: I got that.

4 ADC[MAJ HURLEY]: ---- Well, it's three objections. This
5 objection, ma'am, is even if you allow him to get to be an expert, so
6 say you overruled the suite of objections that we filed, that under
7 1001(b)(4) that expertise doesn't fit within R.C.M. 1001(b)(4).

8 MJ: So the Defense's position that the impact on Soldiers in a
9 unit does not impact on the unit?

10 ADC[MAJ HURLEY]: Ma'am, it's not Soldiers in a unit
11 necessarily by what Government indicated. It's Soldiers throughout
12 the operational spectrum, be they at national, strategic, or tactical
13 level. And it's not tailored to what we would, and the Defense's
14 position would be it's not tailored to the command, 1001(b)(4) in the
15 command prong says this information in the command. So there's a
16 command that must be selected and or a reference point that must be
17 made as to what command we're talking about.

18 MJ: Government, what's the basis for expertise on impact on
19 unit analysts?

20 TC[MAJ FEIN]: Well, Ma'am, first I think there's some confusion
21 right there, Your Honor. The United States, the reason I attempted
22 to articulate and I'll try again here is to qualify General Carr as

1 an expert in DoD intelligence operations is PFC Manning's impact on
2 DoD intelligence operations.

3 MJ: But there's a distinction between his impact on
4 intelligence operations and his impact on individual junior analysts.

5 TC[MAJ FEIN]: Correct, Your Honor. And the United States did
6 not intend to say we're offering General Carr's testimony on
7 impacting individual analysts by name. What General Carr will give
8 an opinion on is that PFC Manning's actions he's been found guilty on
9 having impacted the entire system because of lack of trust of junior
10 analysts and he'll give his opinion on why that is. Your Honor, the
11 United States will say that's directly related to his actions, PFC
12 Manning's actions.

13 MJ: So has this IRTF studied that?

14 TC[MAJ FEIN]: No, ma'am. It's General Carr by looking at what
15 the IRTF didn't study and he reviewed and he knew from that and his
16 opinion based on the 31 years of experience on how the impact will
17 occur. And second, Your Honor, it's not just -- Defense wants to
18 make about the unit but it's also a permissible aggravating factor,
19 Your Honor, an aggravating factor for this is the impact of national
20 security and what General Carr is going to talk about is, is if that
21 -- if the United States Government and DoD and the intelligence
22 community cannot rely on analysts because of lack of trust and the

1 insider threat, that that does impact our national security and he's
2 going to talk about that, too.

3 MJ: That's a different opinion than the one you articulated.
4 The one I thought I heard you articulate was he was going to opine
5 that the trust of junior analysts on the ground is impacted and that
6 impacts national security.

7 TC[MAJ FEIN]: No, ma'am. It's the system he's going to -- that
8 we're offering him as an expert in. It's the DoD intelligence
9 operations that are affected. DoD intelligence operations, that's
10 what the United States is offering him as an expert in and that's
11 what was impacted and the reason it was impacted is what I just
12 talked about, Your Honor, that the intelligence operations itself has
13 been and will continue to be impacted and he's explaining why after
14 he gives the opinion.

15 MJ: All right.

16 TC[MAJ FEIN]: That is based off the analysts, Your Honor.

17 MJ: Any last words?

18 CDC[MR. COOMBS]: Your Honor, one thing, I think I would like
19 to just jump in on this issue because I think it may impact on other
20 witnesses. As we sat down with the Government yesterday, the
21 Government has been giving us the areas of expertise for the
22 witnesses that they intend to call as experts. And then also we
23 have been trying to get from them the basis for the opinion so that

1 we can see how the individual got to that. And that's been in
2 general format that we have received that information. As these
3 witnesses are testifying and this witness is beginning to testify, it
4 appears that the Government is, is trying to put just about
5 everything that ever happened at the feet of PFC Manning. And this
6 may be something that we will brief on, but this is very similar to
7 *US v. Rust*, 41 MJ ----

8 MJ: Okay. Now, what does that mean?

9 CDC[MR. COOMBS]: I'll tell you, ma'am. *US v. Rust*, 41 MJ:
10 471, the seminal case on what is directly relating to or resulting
11 directly from an RCM 1001(b)(4). What *Rust* stands for is that that
12 phrase directly related to or resulting from, imposes a higher
13 standard than mere relevance and, in fact, the accused is not
14 responsible for a never-ending change of cause and effects. And that
15 that's under ----

16 MJ: All right. We're gonna do this. We will take an extended
17 lunch. Do you want to brief this to me?

18 CDC[MR. COOMBS]: Yes, Your Honor.

19 MJ: You can brief it to me.

20 CDC[MR. COOMBS]: I will.

21 MJ: Government, you brief your response. This is apparently
22 going to be a systemic issue for the sentencing.

23 TC[MAJ FEIN]: Yes, ma'am.

1 MJ: If you anticipated this issue was going to come up, why am
2 I hearing about it at a lunch break with the witness sitting here.

3 CDC[MR. COOMBS]: That's a great question because what we
4 asked of the Government and the Government said, hey, we want to sit
5 down with you to, you know, to basically flush out any issues for
6 sentencing. We said, yeah, let's sit down. And then we approached
7 the Government again saying let's sit down. Yesterday, we approached
8 them again saying let's sit down and let's narrow down what are you
9 trying to qualify these individuals as an expert. What areas do you
10 intend them to testify to and what's the basis of their opinion. And
11 we haven't gotten specifics back on any of that. And in this
12 individual we just learn now, there's probably 914 Jencks testimony
13 because we haven't received in discovery any of his previous
14 statements to Congress on the IRTF. We didn't receive those in
15 discovery. So the issue here is not the Defense, you know,
16 sandbagging. The issue is we don't know what these witnesses were
17 going to testify to. When we interviewed them before, we got a very
18 small snippet of time with each of these individuals, 45 minutes to
19 an hour. And at that time the individuals had a very general
20 understanding what they'd be testifying to. Even as of yesterday
21 when we spoke with Brigadier General Carr, our understanding based
22 upon the sit down with the Government of what he qualified as an

1 expert for and what he ultimately is attempting to be qualified as an
2 expert now was not the same based upon ----

3 MJ: Is there anything in writing from the Government?

4 CDC[MR. COOMBS]: No. This was essentially a little over an
5 hour meeting with the Government in the deliberations room with the
6 idea let's, you know, let's figure out what you're trying to offer
7 these individuals as an expert in. What's the basis of their
8 opinion? And what we asked them for is we said, look, if you had
9 given this to us in discovery, the basis, point to where in
10 discovery, because what we intend to ask these witnesses, or okay,
11 what's the basis of your opinion. List them out, one, two, three,
12 four, five. And then compare that with what the Government has told
13 us as far as what they're providing as the basis. But often times
14 the witness either doesn't know for sure what they're going to be
15 testifying to or, in this case, the expertise that we have been told
16 and we spent a considerable amount of time with General Carr on,
17 isn't the expertise that he's going to be testifying to. So and now
18 ----

19 MJ: What did the Government tell you he was going to be
20 testifying about as his expertise?

21 CDC[MR. COOMBS]: I'll defer it to ----

22 MJ: All right.

23 CDC[MR. COOMBS]: ---- the lead counsel on this.

1 ADC[MAJ HURLEY]: Ma'am, its 15 May, I don't know the AE off
2 the top of my head, it's a 15 May filing by the Government indicating
3 which experts they're going to call. I'll get the number for you as
4 soon as possible. They indicated that General Carr was going to
5 talk about information -- or intelligence priorities, coalition
6 operations, and information sharing. And I don't remember how they
7 described the information sharing. In that meeting with the
8 Government yesterday, we talked about intelligence priorities and
9 what the Government I'm sure will say what they said is we must have
10 left with different understandings. I understood that intelligence
11 priorities was still going to be an area of expertise from General
12 Carr. They thought they communicated to me it wasn't. That's just
13 the way it is I suppose. But I was going off of, ma'am, that
14 Appellate Exhibit during my ----

15 MJ: May I see the appellate exhibit? What appellate exhibit
16 are we talking about?

17 TC[MAJ FEIN]: Ma'am, if this makes it easier, we'll provide all
18 the appellate exhibits I've given the Defense plenty of notice since
19 we produced all of the discovery a year ago that has all of this
20 information in it. We'll lay all that out in this filing Mr. Coombs
21 wants to do at the last minute, Your Honor. We'll lay it all out,
22 Your Honor, for the Court.

1 MJ: All Right. Well, let's do this. Right now I want to take
2 a 15-minute recess and I want to see both counsel because we have a
3 schedule here that has to go, that we have got to go forward. And I,
4 as the Court, can't make decisions when I'm just immediately in the
5 middle of a lunch break, here's case X, case Y, case Z, here's issue
6 this, issue that, decide it in 5 minutes. It doesn't work that way.
7 Let's put the Court in recess and come see me.

8 **[The court-martial recessed at 1215, 31 July 2013.]**

9 **[The court-martial was called to order at 1313, 31 July 2013.]**

10 MJ: Court is called to order. Let the record reflect that all
11 parties present when the Court last recessed are again present in
12 court.

13 The government has offered Brigadier General Carr --
14 Retired Carr, as an expert in DoD intelligence operations and
15 intelligence sharing within the United States Government and with
16 foreign parties and coalition forces. The defense objects to
17 Brigadier General Carr's expertise in that 1) the scope is over
18 broad; 2) it's cumulative; and 3) it fails M.R.E. 702 because
19 Brigadier General Carr doesn't rely on facts and data or apply
20 information in the correct way. The Court has considered the defense
21 objections to Brigadier [sic] Carr's expertise and finds that:

22 One, Brigadier General Carr has over 31 years of
23 intelligence experience at the tactical, operational, and strategic

1 levels. He has experience in intelligence sharing within the United
2 States Government, with NATO in Europe, and with coalition forces in
3 Europe, Africa, and Desert Storm -- during Desert Storm and by his
4 position as dual hatted J2 for NATO and US Forces J2. He was
5 selected by senior Government officials to represent them before
6 Congress. He was also the Director of the Defense
7 Counterintelligence and HUMINT Center from -- for DIA from September
8 of '09 to July of 2011, and his appointment -- he was appointed by
9 the Secretary of Defense to lead the JR -- the IRTF. General Carr
10 testified over the years in his work at -- with US intelligence
11 operations and intelligence sharing with United States Government and
12 foreign partners and coalition forces he applied reliable principles
13 and methods to intelligence operations and information sharing
14 issues. Brigadier General Carr is a witness who is properly
15 qualified as an expert by his knowledge of intelligence operations
16 and experience. His opinion will help the trier of fact to
17 understands the evidence and determine facts at issue. Brigadier
18 General Carr was the IRTF Director, and as such was directly involved
19 in efforts to mitigate any impact caused by the WikiLeaks disclosures
20 of information given to them by PFC Manning. His testimony is based
21 on sufficient facts and data.

1 The Defense motion opposing Brigadier General Carr's
2 qualification as expert witness M.R.E. 702 is denied. I also don't
3 find it's cumulative.

4 Now, the defense further objects to Brigadier General
5 Carr's testimony as improper aggravation as R.C.M. 1001. As the
6 Court doesn't know what Brigadier Carr's testimony will be, the Court
7 in its interlocutory capacity will hear the testimony. The defense
8 will file a brief tonight indicating what, if any, of Brigadier
9 Carr's testimony they believe is improper aggravation, along with any
10 case law to include an electronic copy for the Court upon which they
11 rely. The Government will respond tomorrow. If either party desires
12 oral argument, the party will advise the Court and I will make a time
13 for oral argument. Should the Court find that some or all of
14 Brigadier General Carr's testimony is improper aggravation evidence
15 under R.C.M. 1001, the Court will, as acting as sentencing authority,
16 will disregard it. The trial will continue as previously scheduled.

17 Now, the Government will inquire of all potential expert
18 witnesses whether they have testified before Congress and, if so, did
19 they prepare -- did they have a written prepared statement. If there
20 are any statements that the witness has made, that would qualify for
21 discovery under R.C.M. 914 the government will notify the defense,
22 secure the statement, and give the statement to the defense.

1 I met with counsel for both sides during the recess that we
2 had to discuss the way ahead this procedure was -- that the Court
3 just defined was discussed with the parties and would either side
4 like to add anything further?

5 CDC[MR. COOMBS]: No, Your Honor.

6 TC[MAJ FEIN]: No, Your Honor. Just point of clarification, for
7 the Government assume the testimony before Congress as it relates to
8 the witness' testimony under R.C.M. 914.

9 MJ: Of course.

10 TC[MAJ FEIN]: Yes, ma'am.

11 MJ: I assume your request will be no broader than that.

12 CDC[MR. COOMBS]: That is correct, Your Honor.

13 MJ: Is there anything else we need to address before we recall
14 the witness.

15 ADC[MAJ HURLEY]: Ma'am, I do have one thing. I apologize,
16 Major Fein. We're going to have objections as well to the facts,
17 some of the facts that General Carr is going to talk about. Should
18 we make those objections for the Court now or just include that in
19 our brief tonight?

20 MJ: Give me an example.

21 ADC[MAJ HURLEY]: Ma'am, just the establishment of the IRTF,
22 how many people worked there, how -- what their duty schedule was.

23 MJ: What is objectionable about any of them?

1 ADC[MAJ HURLEY]: Money was spent. Ma'am, we believe that
2 that is -- that there's two bits of objection to it. Two bases: The
3 first is that it's law enforcement evidence essentially. That they
4 did an in-depth analysis of the information and in doing an in-depth
5 analysis of the information they identified ways the harm could be
6 minimized and took what they thought were appropriate steps to do
7 that. So our objection to that would be that information, that
8 investigation and the money that was spent and the man hours that
9 were worked is improper aggravation of R.C.M. 1001(B)(4).

10 MJ: Under the case law that says, for example, the article of
11 fact -- that the Article 32 was held and all of the law enforcement
12 activity ---

13 ADC[MAJ HURLEY]: Yes, ma'am.

14 MJ: ---- with respect to that? I understand the objection.
15 You've made it. Government, are you eliciting that kind of
16 information?

17 TC[MAJ FEIN]: Ma'am, from General Carr we're eliciting general
18 information about that but there will be specific information similar
19 to what Major Hurley said with Mr. Kirchhofer, right after General
20 Carr, between the two of them that information will be elicited.

21 MJ: I understand the objection. If you want to stand up and
22 say this is the objection I'm making, go ahead. I would like that in

1 your written brief and, Government, you certainly need to address
2 that in your response.

3 TC[MAJ FEIN]: Yes, ma'am.

4 ADC[MAJ HURLEY]: Yes, ma'am.

5 MJ: Anything else we need to address before we recall the
6 witness?

7 TC[MAJ FEIN]: No, ma'am. May we have a moment?

8 MJ: Yes.

9 TC[MAJ FEIN]: Thank you, ma'am. The United States recalls
10 Brigadier General Carr.
11 **BRIGADIER GENERAL ROBERT CARR, U.S. Army, Retired, was recalled as a**
12 **witness for the prosecution, reminded he was still under oath and**
13 **testified as follows:**

14 **DIRECT EXAMINATION**

15 **Questions by the trial counsel [MAJ Fein]:**

16 Q. Sir, just to remind you that you're under oath still.
17 Please be seated.

18 A. Okay. So, sir, during the last Article 39(a) the Court did
19 accept the United States offer for your expertise. So now I'm going
20 to ask questions, sir, based off of that expertise. How did you
21 first become aware of the WikiLeaks disclosures?

22 A. In the press.

23 Q. And when was that, sir?

1 A. I believe it was approximately 25 July 2010.

2 Q. I know I asked you very briefly before, sir, but now what
3 was the IRTF, Information Review Task Force?

4 A. So when the documents were released, I think the public saw
5 some statements and presentations by senior members and Department of
6 Defense, I think, Chairman, Secretary came out publicly and expressed
7 some significant concern for the safety of sources, the safety of our
8 troops, the safety of those people we were in contact with. And so
9 between the senior levels of the Department of the Defense, the
10 senior levels of the Office of Director of National Intelligence and
11 DIA, they came to the conclusion that they needed to put a task force
12 together to deal with this particular issue and the task force was
13 formed and the name that was given to it was the Information Review
14 Task Force, otherwise IRTF.

15 Q. What was your role, sir, as it pertains to the IRTF?

16 A. So in agreement between DIA, the Department of Defense
17 senior leadership and ODNI came to the conclusion that DIA would take
18 the responsibility for establishing that task force and it was
19 determined that General Burgess would then turn to me and give me
20 that function, that task to oversee the task force. Get it
21 established, get started, and execute the mission.

22 Q. Sir, who ultimately determined that DIA would have the lead
23 for running this IRTF?

1 A. I believe it was an agreement between the Secretary of
2 Defense's front office, the ODNI's front office at the Chief of Staff
3 level and Lieutenant General Burgess personally. Those three agreed
4 that the IRTF would take that responsibility.

5 Q. And who ordered the IRTF to be stood up ultimately across
6 the Department of Defense?

7 A. The Secretary of Defense signed a memorandum that gave --
8 established the task force, required support by multiple DoD agencies
9 and organizations and gave us a series of tasks that he expected us
10 to accomplish.

11 Q. Sir, when was the IRTF stood up?

12 A. Within just a day or two of the release of the Afghan
13 files.

14 Q. So in reference to the summer of 201, which months, June,
15 July or August?

16 A. I believe it was still in July we stood up. It was
17 literally within 24 or 48 hours.

18 Q. Could you please describe for the Court the tasking that
19 was basically ordered by Sec Def for the task force that you oversaw?

20 ADC[MAJ HURLEY]: Objection, ma'am, relevance as previously
21 discussed.

1 MJ: Understood. I told the defense to go ahead and articulate
2 when they would be objecting, but that's going to be in the written
3 filing.

4 ADC[MAJ HURLEY]: Yes, ma'am,

5 MJ: So proceed.

6 Q. So, sir, could you please describe the tasking that you
7 received for the IRTF, what its function and purpose is for?

8 A. So there was a number of tasks and I don't know if I'll
9 capture all of them right now. I think it was like six or eight, if
10 I'm not mistaken. The first task was to understand any sources or
11 methods or Intel activities that might be at risk as a result of this
12 release. There was another task in there that talked about
13 protecting the population on the battlefield. People that had their
14 names in these reports that might be viewed as collaborators with the
15 U.S. forces. I was to look for any insensitivities to a particularly
16 religion or a particular culture and try to identify those as quick
17 as we could. I was to look for any issues that might be put forth
18 that would cause fractures between various nations or various parts
19 of the coalition. I was to provide recommendations for mitigation
20 strategies and I was to provide the Department advance warning on any
21 additional releases that might have been subsequent to the Afghan
22 files.

1 Q And, sir, what did this memorandum -- what type of
2 authorities did it, I guess, give you and the IRTF?

3 A. Well, it certainly gave me -- I think it gave me the
4 authority to, one, be the single element within the Department of
5 Defense that was charged with the responsibility of reviewing these
6 documents. It gave me the authority to coordinate broadly across the
7 Department of Defense as I worked with these documents. It gave me
8 the authority to work an Intel mission to understand and provide
9 warning to the Secretary of Defense and I think in there it gave me
10 the authority or the requirement that I would retain or maintain
11 close coordination with the Office of National Intelligence and, in
12 particular, the counter intelligence executive that had some
13 responsibilities for this effort at the national level.

14 Q. Sir, did the -- Did your original tasking and authorities
15 have any either prohibitions of limitations with your involvement
16 with law enforcement?

17 A. I don't recall any prohibitions or limitations. What I do
18 recall was that -- and I don't remember whether it was in the
19 document itself, but at least a recognition that our actions would be
20 well coordinated with any law enforcement settlements to ensure that
21 we didn't do anything detrimental to the case.

22 Q. And, sir, you mentioned a moment ago one of the tasks was
23 mitigation strategies. Generally, what do you mean by that?

1 A. To try to -- Perhaps mitigation strategies might not be the
2 best word there. Perhaps a better word is identify where risk might
3 have resulted. Risk came about as a result of this release of
4 documents and to identify that risk and to inform those folks that
5 may be victims of that risk and to get that word and understanding to
6 them as quick as possible.

7 Q. Sir, was the IRTF mission focused on a U.S. government wide
8 assessment or was it DoD centric?

9 A. The mission was DoD centric and -- but as this was such an
10 -- as this was such an unusual and a new situation and the magnitude
11 of it was such that we quickly became a center of gravity in terms of
12 expertise of understanding this. So we brought in and broadened that
13 envelope by bringing in Department of State type people, other
14 agencies of the national government. Rather than duplicate the
15 effort, begin to connect with us in an effort to save resources.

16 Q. Sir, so you used the term -- two terms, unusual and new.
17 What do you mean by that, this was an unusual and new situation?

18 A. Well, no one had ever seen, witness or had to deal with a
19 release of this number of documents, this number of classified
20 documents, this type of reporting from the battlefield as a war was
21 going on.

22 Q. And, sir, speaking of the information, what type of
23 information was the IRTF tasked to review?

1 A. The IRTF was initially tasked to review the Afghan files or
2 the CIDNE-Afghanistan database that was released. I don't recall the
3 exact number 70,000-plus files and then we were required to review
4 any other information that we thought had been released from
5 government control into WikiLeaks or anywhere else.

6 Q. Sir, how long did the IRTF operate for, approximately?

7 A. I believe we operated for about 10-plus months.

8 Q. Now, sir, just specifically looking at the IRTF macro level
9 operations, as head of the IRTF, what action or correspondence did
10 you have with senior DoD and U.S. government leadership?

11 A. So as a matter of routine, I would say there were three
12 things that came to be. First of all, I participated in a daily VTC
13 between the IRTF, the Director of National Intelligence and the
14 Counter-Intelligence Executive and then we were joined by a series of
15 reps from various agencies across the Intel community and other
16 departments that might have been impacted by this release. The
17 second one was the task force and I released a report to the Director
18 of DIA who submitted that report to the Secretary of Defense each and
19 every week and then for at least probably the first 45 days there was
20 a daily or every other day meeting of senior officials just outside
21 of the Secretary of Defense's Office down a level or two where we
22 shared knowledge and tried to understand the issue and work forward.

1 Q. Again, sir, on a general -- generally speaking with these
2 daily VTCs and these weekly reports up to the Secretary of Defense,
3 what type of information -- what is the gist of that -- of those
4 either VTC briefs or the reports?

5 A. So it was a combination of things. Initially, it was just
6 trying to get the status of the IRTF out and understanding the effort
7 that we were undertaking, whether we had all of our resources, how we
8 were going to be configured, out we were going to communicate with
9 people, how we were going to operate in this kind of undefined world
10 that we were creating here. The second part of it was to understand
11 how we were making progress for getting through these documents or
12 understand these documents and have a common understanding of how we
13 were going to push that impact or that risk out to people that needed
14 it. And then last, but not least, you know, an attempt to capture
15 the activities that were ongoing in various elements of the
16 government, the questions that we needed answered so we knew what we
17 were working on and, you know, what was the effort ahead, what was
18 the next step so people had a common understanding as we worked
19 through this.

20 Q. Sir, you used the term "undefined world." What do you mean
21 by that when you described the IRTF?

22 A. Yes. So, you know, these were our documents. This is not
23 new information to the U.S. government, these are our documents.

1 These are documents that we've had in our possession, securely in our
2 possession for a long period of time and now all of the sudden this
3 massive amount of data was available to the public, to the adversary,
4 to everyone and we needed to begin to come to grips and understand
5 what those impacts were. That's not something that you do in that
6 volume, or you necessarily do. There's not a course out there,
7 there's something you train, there's not something -- there wasn't a
8 playbook we could go to. We had to figure this out and move forward
9 kind of on the fly in real-time.

10 Q. Sir, in your 31 years of experience, has a task force like
11 this ever needed to be set up for similar reasons?

12 A. Not to my knowledge.

13 Q. Sir, what factors drove the priorities of the review effort
14 during the initial days of the IRTF's establishment?

15 A. So one of the biggest factors was protecting the troops
16 forward and, you know, I think that was probably the very most
17 important one right off the bat. We had to understand this data and
18 begin to inform the folks on the battlefield as to what the potential
19 implications were for them and then give them some reassurance that
20 they didn't have to sit on the TOC in the middle of a hill in
21 Afghanistan and go through 77,000 documents to find their
22 vulnerabilities. That was our job. We were going to lift that
23 function from them and that task force was going to work with CENTCOM

1 to push that data out. That was first and foremost. I think the
2 second one was we needed to start making sure that our sources were
3 not vulnerable because we were going to have people that were going
4 to go out and meet with these sources and that kind of stuff, and we
5 needed to make sure that we were doing the right thing.

6 Q. Sir, what do you mean by sources?

7 A. In the case that I just mentioned, what I mean is folks
8 that go out and talk to people who were providing HUMINT information
9 at the request of the U.S. Government or the task in the U.S.
10 Government back into the system. That's different than just a casual
11 conversation with a civilian. This is sources and there are some
12 obligations, we have to protect them. And then, as you walk your way
13 down the list of priorities, you get to, you know, is there anything
14 in here that could hurt the coalition because we had to look out for
15 -- I'm not sure there's another country or department that could get
16 through this amount of data this fast and make sense of it and
17 understand the implications. So we had to know whether our British
18 allies or whether our French friends or whoever else was on the
19 battlefield with us was had -- hadn't been put at some risk as a
20 result of our -- of activities.

21 Q. And, sir, when you just said that no other country would
22 have the ability or department to go through this data this fast,

1 could you please explain to the Court, just put the perspective.

2 What do you mean this amount of data this fast?

3 A. 77,000 documents is a lot and you've got to get it in.

4 You've got to verify that it's actually your data. You've got to
5 make sure that it's the data that actually was yours and hasn't been
6 manipulated in some way. And so we had to get the data together. We
7 had to securely have confidence that we knew the data that was out on
8 the internet and then we had to begin to put technical processes in
9 place so that it wasn't an eyeball line-by-line to figure this thing
10 out. We began to use technical capabilities and I am sure that there
11 are certainly private companies, private industries, there are other
12 folks that could do that. But, as a general rule, there was -- all
13 the allies that I was talking to as I was going through this, nobody
14 had the wherewithal or the resources to put this together this fast
15 and get to the answers that we needed to get to.

16 Q. Sir, was that one within the first month or so?

17 A. Oh, absolutely. This was within days.

18 Q. And, sir, how did you determine what information had been
19 compromised or potentially compromised and needed to be reviewed?

20 A. Well, obviously, we started with the data that we found on
21 the web. I mean, the Afghan national -- the Afghan CIDNE database
22 was out there. So we knew that was the start point and that was the
23 priority of the effort. You know, as quick as we got processes going

1 on that, then I begin to shed, you know, five or ten percent of the
2 effort to take on that task that talked about what else is out there,
3 what's missing. The first pointer literally became commentary. I
4 think it was wired.com magazine or something, one of these magazines
5 where there was excerpts in this magazine that talked about chat logs
6 between the Private Manning and individuals within, you know, the
7 community that read wired.com. So we used the data out of those chat
8 logs to begin to take a look at the internal structure and figure out
9 whether that was even possible and, once we realized that it was
10 possible, then we begin to dialogue with the prosecutors to take the
11 next steps forward, to see where we needed to go.

12 MJ: Let me interrupt you for just a second. You said if that
13 was possible. If what was possible?

14 WIT: So, you know, depending on -- so I think what was said in
15 the wire.com notes and the magazine, took credit for, think he used
16 the term GTMO files and then he talked about files from the CIDNE
17 database in Iraq ----

18 MJ: Okay. I understand.

19 WIT: ---- and talk about that kind of stuff. So what I wanted
20 to do at first was to figure out whether it was even possible for him
21 to have that access from the location he was. Once we validated that
22 that was possible, then we went with getting synced up with the legal
23 system.

1 Q. And, sir, what do you mean by -- you said it now twice.
2 First, you said you got with the prosecutor, you synced up with the
3 legal system once you identified what's possible. Why and to what
4 extent did you do that?

5 A. For a couple of reasons. First of all, the one that hit us
6 in the face was the Iraq logs which, the magnitude of the Iraq logs,
7 was something on the order of 400,000-plus and the fact of this
8 significant force structure that was in Iraq at the time gave us
9 great concern. So to go through that was going to require a
10 significant increase in resources and time and we needed to get on it
11 quickly. So just to kind of make sure that we were heading in the
12 right direction, we linked with the federal prosecutors to get their
13 understanding and to get some verification that, in fact, this was
14 probably gone.

15 Q. And just to clarify, sir, because when you say federal
16 prosecutors. You also met with me and the Army prosecutors?

17 A. Exactly, right.

18 Q. Now, with that, sir, were you getting directions, sir, from
19 the law enforcement or prosecutors or just getting information from
20 them?

21 A. I didn't get any direction in terms of things to do. What
22 I did often ask is to make sure that I'm not doing anything that

1 would preclude prosecution. And so I kept, you know, I had legal
2 advisors on my team but I wasn't getting direction from them.

3 Q. And, sir, what was the general classification of the
4 information that IRTF started to review?

5 A. The classification was U.S. Secret and below information.

6 Q. At any point, sir, were you concerned that even more highly
7 classified information was being compromised to WikiLeaks?

8 A. Yeah, I was very concerned and because, as we learned, as
9 time went on, what was in these logs, this article in wire.com that
10 contained the chat logs, it talked about the GTMO detainee files, it
11 talked about the Afghan files, it talked about the Iraq files. I
12 think it talked about the Department of State cables and it also
13 talked about information off a system known as JWICS. So none of the
14 data we previously talked about.

15 ADC[MAJ HURLEY]: Objection, ma'am, relevance. I'm sorry to
16 interrupt, sir.

17 MJ: Yes.

18 ADC[MAJ HURLEY]: Objection, ma'am, relevance. What's the
19 relevance of this information.

20 MJ: What is the relevance of this information if it's stuff
21 that's not disclosed?

22 TC[MAJ FEIN]: Ma'am, the relevance is simply to have General
23 Carr explain what the left and right limits of what the IRTF did or

1 didn't do. This was the last question, actually, just to say they
2 didn't look at that.

3 MJ: All right. So let's move on then.

4 TC[MAJ FEIN]: Yes, ma'am.

5 ADC[MAJ HURLEY]: And, ma'am, I'm sorry, Major Fein, we're not
6 -- we're not planning on making these continuing objections, but I
7 think you understand some of it.

8 MJ: All right. Put it in your filing. Go ahead.

9 TC[MAJ FEIN]: Sir, one moment, please.

10 Q. Sir, now, I'd like to talk about -- you've already
11 referenced a few of them, the different data sets that were reviewed.
12 Specifically, what large data sets did the IRTF review.

13 A. It reviewed the CIDNE database of Afghanistan. It reviewed
14 the CIDNE Iraq files. It reviewed the GTMO files. I think there was
15 a couple of assorted pieces of papers and videos and things that came
16 out and then there was the State Department cables. We did not
17 review the entirety of the State Department cables. We did go
18 through the State Department cables and look for indications of where
19 information within there might have an impact on U.S. forces or on
20 the Department of Defense. But I did not do, you know, a line-by-
21 line thorough review of the State Department cables as we did with
22 the Department of Defense information.

1 Q. Sir, just to clarify one issue. When you say the CIDNE
2 Iraq and CIDNE Afghanistan, do you mean the SIGACTs from the CIDNE
3 Iraq and Afghanistan databases?

4 A. Exactly, all of those reports that were contained within
5 that database.

6 Q. Sir, can you generally characterize what types of other --
7 when you said there was a few other documents and videos, how would
8 you characterize those as the types of information other than video?

9 A. I'm not sure. You know, there -- it was data that was
10 available on the SIPRNET. It was classified information up on the
11 SIPRNET that had been accessed and pulled down and pushed out.

12 Q. Sir, prior to your work of leading the IRTF, were you
13 familiar with the CIDNE database and the SIGACTs?

14 A. I was.

15 Q. And how so, sir?

16 A. We certainly -- We used it in Afghanistan when I was the J2
17 in Afghanistan and the CIDNE database was a significant topic of
18 discussion in Afghanistan as we worked with our NATO partners to
19 merge our information databases together. So we were constantly
20 working with the NATO team so that the U.S. and the NATO could get on
21 a common database of information in Afghanistan.

22 Q. And, sir, from your experience with CIDNE, did CIDNE
23 contain information that was used by Intel Analysts?

1 A. It did. It contained information that was used by the
2 operators, by the logisticians as well as well as by Intel Analysts.
3 It gave you situational awareness and an understanding of ongoing
4 reporting on the battlefield.

5 Q. And, sir, are you generally familiar with the SIGACTs that
6 PFC Manning has been found guilty of compromising?

7 A. I'm generally familiar with the type of SIGACTs that are
8 inside this database, yes.

9 Q. Is that from your time as the leading IRTF, sir?

10 A. It's the time of leading IRTF as well as participating in
11 reading SIGACTs on a daily basis in Afghanistan.

12 Q. In general, sir, what type of information is included in
13 the CIDNE SIGACTs?

14 A. It's largely battlefield reporting. It's events that go on
15 in the battlefield that are captured for command and control purposes
16 for historical records for understanding so that you can build a
17 knowledge database that allows your mission to go forward.

18 Q. Sir, did any of the information -- the CIDNE SIGACTs reveal
19 and aspects of TTPs and how we respond to certain combat situations?

20 A. Well, it certainly did. In accumulation, you can certainly
21 begin to appreciate how we might respond when we work medevac
22 operations. You can certainly appreciate incidences and how we

1 respond for things like IED or mortar shells or that kind of stuff.

2 Convoy operations, that kind of stuff.

3 Q. Sir, was there was information about insurgent activity?

4 A. There was operational reporting on insurgent activity,
5 absolutely. What you would get is inside the database you have
6 things like patrol reports. So, if a patrol went out and when they
7 came back they would write a report that might include conversations
8 with local nationals who might tell you their view of insurgent
9 activity in the area and how they judge it. So, yes, you could
10 capture an understanding and get more information about insurgent
11 activity as a result of looking at that database.

12 Q. And, sir, that example you gave, would those reports
13 sometimes include those local nationalist names?

14 A. In many cases they were. I don't know exactly, but I think
15 the Afghanistan database alone had us concerned with as many as 900-
16 plus Afghan names that were in there.

17 Q. And, sir, did it just include their names or other
18 identifying information?

19 A. In most cases it had other identifying information.
20 Certainly in some cases it might include what their position and/or
21 function might be in a particular village. In some cases it might be
22 identification of the individual that lives in the third compound
23 down. What you're trying to do is you're trying to build some

1 understandings to pass on to the next team. So you're, you know,
2 building your knowledge. You're building your information and
3 understanding. So if I'm meeting with the shopkeeper at the third
4 store, I want to know I met with him the next time I go out there or
5 the next team that goes out. So there is some identifying
6 information.

7 Q. And, sir, was there information in the CIDNE SIGACTs about
8 individuals, U.S. persons, in those reports?

9 A. Absolutely. So in many of those reports, you know,
10 indicate activities and the activities that U.S. forces were taken as
11 they came back and reported it. But they also included medevac
12 reports that often had stories and some, you know, tough reading
13 associated with the physical injuries that Servicemembers were having
14 and in some cases it was the story about how an individual might have
15 lost a limb or how they may have died.

16 Q. Sir, based on your experience as the ISAF J2, did you
17 believe that information could be used by our adversaries?

18 A. I did.

19 Q. And why -- do you today, sir, or did you?

20 A. I did.

21 ADC[MAJ HURLEY]: Objection.

22 MJ: Yes?

1 ADC[MAJ HURLEY]: It's cumulative to what we received during
2 the merits portion of the trial. Do you believe it could, yet how
3 could it and we would say it's cumulative for that purpose, ma'am.
4 MJ: Is your question could or is your question did?
5 TC[MAJ FEIN]: Well, eventually it will be "did", Your Honor,
6 but it's leading up to did it. I'm laying the foundation to get to
7 that ultimate question.
8 MJ: All right. I'm going to -- overruled. Go ahead.
9 Q. Sir, based off of your experiences of the ISAF J2, did you
10 believe that information could be used by our adversaries?
11 A. Absolutely.
12 Q. And why do you believe it could have been used?
13 A. In particular to the Afghan files, one of our primary
14 mission is to protect the population over there and we had to get
15 close to the population. We had to understand the population and we
16 had to protect them. If the adversary had more clarity as to which
17 people in the village were collaborating with the U.S. forces, then
18 there is a chance that those folks could be at greater risk.
19 Q. Sir, are you familiar the Net-Centric Diplomacy Database?
20 A. I am. I believe that sometimes we refer to that as the
21 Department of State cables that we reviewed.
22 Q. And how are you familiar with that, sir?

1 A. Two ways. One, as a J2 my analyst, you know, routinely
2 accessed that data to gain more understanding, more situational, to
3 understand pol-military activities that were ongoing in a particular
4 country or environment. And then number two, as part of the IRTF,
5 once I realized that that was gone I had to, you know, begin to learn
6 more about that particular database.

7 Q. Sir, you used the term pol-mil. What do you mean by pol-
8 mil?

9 A. Political military relationships. So it was, you know, as
10 a military command in Iraq [sic], you've got to work your relations
11 with the Afghan political leadership in coordination with the
12 Department of State.

13 Q. Sir, in terms of the information within the Department of
14 State cables and specifically DoD information, what type of DoD
15 information was contained within those cables?

16 A. I don't know that I specifically recall all the DoD type
17 stuff in there. Certainly there was Department of State cables that
18 talked about their negotiation of deployment, military training teams
19 to various countries throughout the world and how that negotiation
20 was going, status of forces and all of that kind of stuff, and how
21 they would be protected in that. There were numerous cables in there
22 that talked about the interaction between the defense attaches and
23 the host nation Ministry of Defense and they were very blunt and

1 sometimes critical of how that particular host nation responded. So
2 that created fractures between our ability to get in there and
3 communicate. And I believe there was data in there that, you know,
4 to get to places like Iraq and Afghanistan, you have got to rely on a
5 lot of allies, you've got to rely on a lot of companies -- countries
6 to work your supply lines and ensure you can take care of your forces
7 and all of those supply lines, all of those efforts required
8 negotiation between the U.S. Government and the host government.
9 Then, ultimately, it affects our ability as DoD to do our mission.
10 So I think there was some instances in there where some of those more
11 difficult discussions might have been played out in public as result
12 of these cables.

13 Q. Sir, when you say as a result of these cables, are those
14 the cables that -- the compromised cables by PFC Manning?

15 A. Yeah, certainly they were all compromised at the time they
16 left the security of the U.S. Government. I don't know how many of
17 those cables have actually been fully released into the open, but
18 obviously some of them have.

19 Q. Yes, sir. Why was the Department of State reporting a
20 concern to the Department of Defense?

21 A. The Department of State was reporting a concern to the
22 Department of Defense because the Department of State took a step a
23 number of years ago to share with the Department of Defense those

1 cables that they thought would be of benefit to military leaders. So
2 over a period of time, they moved cables from their internal State
3 Department system and they provided them through a portal on the
4 SIPRNET to be accessible to the Department of Defense. Great
5 interagency coordination, great opportunity for military folks to be
6 more wired into what was going on. It allowed our Intel and our
7 operators to have much more enhanced situational awareness of what's
8 going on. The fact that we didn't secure, you know, that there was a
9 crime that took place and that those documents got out, the State
10 Department felt that we had let them down.

11 ADC[MAJ HURLEY]: Ma'am, may we take a comfort break and have
12 a brief 802 during that comfort break?

13 MJ: How long would you like?

14 ADC[MAJ HURLEY]: Ten minutes would be fine, ma'am.

15 MJ: All right. Is this -- Any objection?

16 TC[MAJ FEIN]: No, ma'am.

17 MJ: All right. Once again, same rules apply, sir. We are
18 going to take a brief recess until 10 minutes after 2.

19 **[The court-martial recessed at 1357, 31 July 2013.]**

20 **[The court-martial was called to order at 1412, 31 July 2013.]**

21 MJ: Court is called to order. Let the record reflect all
22 parties present when the Court last recessed our again present in
23 court. The witness is on the witness stand. Proceed.

DIRECT EXAMINATIN (Continued)

Questions by the trial counsel [MAJ Fein]:

Q. Sir, before I proceed, I just want to get some points clarified from you. When you talked about or when you testified earlier about the IRTF and the original mission, was the IRTF focused on the original data from the databases when you talked about looking at the Lamo chats and pulling that information or was the focus on the information that was sitting on the WikiLeaks website?

A. The first function and the first priority was to deal with the information that was sitting on the WikiLeaks website.

Q. Okay.

A. But there was a task by the Secretary of Defense that was for us to then provide him warning and review all other documents that are expected to be in the hands of WikiLeaks as a result of this activity.

Q. So, sir, in the early fall of 2010 when the Department -- when the IRTF was reviewing the State Department cables, how did you determine that population of documents to review?

A. We had a -- I believe we got a mirror image of that data that we thought was in the database as of a certain particular date. So we didn't know, you know, exactly what was going to come out on the website or anything. If it had come out, we certainly had an opportunity to see it. But what we were looking at was a mirror

1 image of those records as they existed at the time that they were
2 likely taken from the secure environment.

3 Q. Thank you, sir. Sir, are you familiar with the -- you
4 mentioned earlier the JTF GTMO documents. How are you familiar with
5 those documents?

6 A. Through the IRTF process, we certainly had to review those
7 documents and then I have some familiarity with those documents as a
8 result of my job on the -- when I was the Assistant J2 on the Joint
9 Staff, I had a role in the detainee processes of the Joint Staff and
10 we used to look at those as we reviewed cases.

11 Q. Sir, was the compromise of this information a concern to
12 the Department of Defense?

13 A. It was.

14 Q. And why, sir, in your role as overseeing IRTF was that a
15 concern?

16 A. It was a concern in a number of ways. The first one is
17 that -- I mean, these are pretty dangerous people who have a number
18 of dangerous friends and allies they were working with that are sworn
19 to do us harm. Up until the release of those files, the adversary
20 had no idea what knowledge we had obtained from them. So they had no
21 idea how much of that puzzle we were able to put together or not put
22 together. The second thing of significant concern was I think in
23 those particular documents might have been some of the first time

1 that the broader public gained some understanding as to how some of
2 these folks were detained and captured.

3 Q. Now, sir, I assume that that was what the potential threat
4 was when the IRTF was looking at it regardless to if it was published
5 or not or released or not, correct?

6 A. That's exactly right. I mean, I couldn't wait to the
7 release to figure out and tell someone of the potential risk. I had
8 to get ahead of that so that folks could figure out if there were any
9 mitigation charts. In those documents we talked about how some of
10 these folks were detained, how some of these folks were captured and
11 in many cases it was a result of cooperative efforts between two
12 governments and sometimes those activities were not publicly known
13 and foreign governments were very concerned, should that data get
14 out, it had the potential for bringing down a particular ruling
15 coalition somewhere.

16 Q. Now, sir, I'd like to focus your testimony at this point
17 about the initial concerns about all the leaks now that ----

18 A. If I could go back, just one more thing on the detainee
19 piece because I think this is important. At the time, we were trying
20 to move people out of GTMO. We were trying to repatriate them to
21 either their own country or second countries. So that involved
22 negotiations between our Department of State and foreign governments
23 and so, you know, everything that was contained in those DABs were

1 not part of that negotiation process. So there was a delta between
2 what we were saying and now what potentially had the possibility of
3 coming out into the public light. There might have been a delta
4 between what the foreign government was saying and what they had told
5 their people and that could, in fact, cause conflict between two
6 nations and stop our efforts to move forward on the Guantanamo.

7 Q. Sir, across all the data sets, approximately how much
8 information in total did IRTF review?

9 A. You know, I think in the cumulative we were talking about
10 something in the magnitude of 800,000 documents. We reviewed every
11 single document out of the Iraq database. So 490-some thousand. We
12 reviewed every document out of the Afghan database and we reviewed
13 every document out of the GTMO files. Again, on the NCDs, we only
14 did snapshots and things that we thought had implications directly to
15 the Department of Defense.

16 Q. Sir, did the size of the compromised information cause any
17 specific concerns for the U.S. Government and our foreign partners?

18 A. Absolutely. You know, from a foreign partner standpoint,
19 as I said on the GTMO files, you know, when they -- when they talk to
20 the United States and there's classified information, they expect us
21 to have an obligation to protect it and we're protecting it for
22 ourselves and for them. When this data got out, there was a number
23 of foreign partners that were routinely engaged with me who became

1 greatly concerned whether we were still a trusted partner and whether
2 we could still engage in Intel operations with them and they wanted
3 to know what the extent of this is. How far was this going? Should
4 we stop cooperation and how bad is this going to be?

5 Q. And, sir, why was it a concern if other nations doubted our
6 ability to secure our sensitive classified information?

7 A. It's absolutely critical. It was critical for us to have
8 trust in reliance in the war zone with our partners. It was
9 absolutely critical in our Special Operations Forces around the world
10 that had partners. In so many operations we don't do this alone. We
11 have partners and we rely on trust and the ability for nations to
12 work together for common good.

13 Q. Sir, did the IRTF have any -- and do you, specifically,
14 have any specific concerns about how the compromised data might
15 impact the Iraq and Afghanistan wars at the time?

16 A. I did. Very much so. The biggest one was to protect our
17 sources and to protect our troops that were on the ground out working
18 those particular sources. The other thing was to -- concern that we
19 keep the momentum going and we needed to continue to dialogue on the
20 battlefield. We needed to go out on the battlefield. We needed to
21 build relations with the local population and we needed them to keep
22 talking to us. We needed to understand what was going on. This is
23 a difficult environment to understand. You need that information to

1 continue to come on. You need that dialogue and we were very
2 concerned that in some cases, that, you know, folks might choose not
3 to talk to us anymore because of information that would come out on
4 here could be detrimental to their livelihood or their ability to
5 function in that environment.

6 Q. Sir, earlier you testified in general about the steps and
7 priorities that IRTF had and you just talked about sources. Sir,
8 what was the duty to notify?

9 A. So if the United States intelligence community has created
10 an arrangement with an individual and that arrangement is operating
11 on behalf of the U.S. Intel community, to gather knowledge and report
12 back to us, that becomes a HUMINT source. I think we have a
13 regulatory or a legal obligation to protect that particular source.
14 When this data all came out and the hundreds of names that were in
15 there, they were not necessarily -- not all of these names were
16 legitimate intelligence sources that were committed to operating on
17 our behalf. They were relationships of local villagers that were
18 cooperating with patrols and Soldiers as they went through as they
19 talked from the police chief to the captain so that they would begin
20 to work together in a security operation. I didn't have a legal or
21 regulatory obligation, but I think as the Secretary and others
22 defined it, we had a moral obligation. So we created the concept of,
23 instead of a duty to warn, it was a duty to notify. So we went

1 through the process to evaluate each and every name as to whether
2 their name being released within this context of data put them at a
3 greater risk. And we tried to characterize it and we pushed that
4 forward and we allowed local commanders to make that decision as to
5 whether they wanted or needed to put a Soldier in harm's way to go
6 notify this particular individual.

7 Q. Sir, how did the task force identify these individuals that
8 ultimately we had a duty to notify?

9 A. First and foremost was just, you know, identify by name
10 which is a very difficult task given the name constructs that we were
11 dealing with and over, you know, one particular name might happen to
12 be in the databases multiple times and so we tried to match them up,
13 narrow them down as best we can, identify a name, attach him to
14 another -- a number of reports, work with CENTCOM, work with the
15 analyst and try to put a picture together as to whether this
16 individual, as a result of the things he's saying, might be at an
17 additional risk then before the data came out and that we used that
18 to make a risk assessment and we pushed that down in cooperation with
19 CENTCOM to the ground forces.

20 Q. Sir, why was this information then given to CENTCOM?

21 A. CENTCOM being the higher command for the Afghan and the
22 Iraq war. Rather than come directly from the national or DOD level,
23 we worked through CENTCOM. We needed their team work, we needed

1 their cooperation, we needed their expertise and we needed a process
2 flow.

3 Q. Sir, are you aware of whether anyone was actually harmed as
4 a result of these compromises?

5 ADC[MAJ HURLEY]: Objection, ma'am, hearsay.

6 MJ: Overruled.

7 A. As a result of the Afghan logs, I only know of one
8 individual that was killed. The individual was an Afghan national.
9 The Afghan national had a relationship with the United States
10 government and the Taliban came out publicly and said that they
11 killed him as a result of him being associated with the information
12 in these logs.

13 ADC[MAJ HURLEY]: Ma'am, if we may object again as to
14 relevance. General Carr is going to going to talk about how this
15 person wasn't listed in the WikiLeaks disclosures. This individual's
16 name wasn't listed among those names, among the hundreds of names he
17 talked about.

18 MJ: Is this, what you're testifying to, tied to the information
19 in the disclosures in any way?

20 WIT: The Taliban killed him and tied him to the disclosures.
21 We went back and searched for this individual's name in all of the
22 disclosures. The name was not there. It was a terrorist act -- It
23 was a terrorist act on behalf of the Taliban threatening all of the

1 others out there. But the name of the individual that was killed was
2 not in the disclosures.

3 MJ: Objection sustained.

4 TC[MAJ FEIN]: Yes, ma'am.

5 MJ: Move on.

6 **Questions by the trial counsel [MAJ Fein] continued:**

7 Q. Sir, with the names being in these reports, how does -- how
8 does having individuals' names in our tactical reports impact our
9 operations with local nationals?

10 A. Well, their interaction with our Soldiers is critical. You
11 can go into a village and we work with a local government. We need
12 the police chief, we need the mayor, we need the civil leaders within
13 that town to work with us and cooperate and talk to us and help us
14 build a civil society. So the concern was if their names came out
15 and they thought that their conversations with the United States was
16 no longer, you know, comfortable or protected, then they would back
17 off from those conversations and less interactions which would slow
18 our momentum and, in fact, our overall mission success. We saw signs
19 of that and we signs where there was no impact. But we actually, you
20 know, there are some people out there that quit talking to us as a
21 result of the releases.

22 Q. Sir, did you determine there's a requirement to notify our
23 foreign partners?

1 A. I did on a couple of levels. One, I was directed by more
2 senior government officials to ensure that I provided sufficient
3 transparency to key allies and I routinely met with representatives
4 of their government once a week to ensure that there was enough
5 transparency and they weren't surprised by the potentially harmful
6 statements in the public that got out as a result of this. The
7 second one was that, as we talked earlier, in Afghanistan we were
8 really trying to get the NATO team and the U.S. team to get their
9 information in a common database. Part of the data that was later
10 determined to be in this release was a number of documents that was
11 not originated by the United States community. These were actually
12 NATO originated documents and so, even though those documents hadn't
13 come out, I took the step with approval of my leadership to transmit
14 knowledge of that information to each country.

15 MJ: Just a moment. Yes?

16 ADC[MAJ HURLEY]: Objection, relevance. Is this what -- Is
17 this information that's charged and PFC Manning was found guilty of
18 based on the witness's description, it's not. So we're objecting as
19 to the relevance of it.

20 MJ: Is this the information that was included in the CIDNE-I
21 and A database?

22 WIT: Yes.

23 MJ: Overruled.

1 Q. Sir, what specific steps did the IRTF take to address these
2 concerns?

3 A. Again, we met with our foreign partners on a routine basis
4 and in the case of the Afghan files that were the NATO originated, we
5 consolidated those and pushed them back to them as quickly as
6 possible notifying them that this data was no longer under the
7 control of the U.S. Government and had been compromised so that they
8 could do their own review and come to their own conclusions at what
9 risk their people may be in.

10 Q. Sir, why did you decide that the IRTF needed to send these
11 letters, this information to foreign partners?

12 A. Because the ability to sustain the trust of our NATO allies
13 in Afghanistan and the need to continue to move forward in building
14 the information sharing environment there, we could not afford for us
15 to hang on to this knowing that it was out there without giving them
16 a chance to protect their Soldiers just like we were going through
17 trying to do everything we could to protect our own Soldiers.

18 Q. Sir, do you recall when -- I guess in context to the IRTF
19 standing up, when this occurred?

20 A. Probably within the first 30 -- 30 days we came to that
21 conclusion that that data had been compromised and we needed to
22 provide one.

1 Q. Now, in reference to what you testified earlier about
2 personal information of U.S. Soldiers, you mentioned that the CIDNE
3 reports also contain PII. Did the IRTF conduct any type of process
4 to identify this information?

5 A. We did.

6 Q. And the actual data?

7 A. Yes, we did. We went through all the data to identify
8 where PII had been released into the open and we notified that
9 Servicemember's service, whether it was Army, Navy, Air Force,
10 marine, we pushed it to back to the service so they could take the
11 appropriate and necessary actions to protect the individuals.

12 Q. And why, sir? Why transfer it to over to the services like
13 the Army GI?

14 A. It did go to the Army GI in particular because it was a
15 service function and not something the IRTF was doing. We were
16 identifying the risk and moving it to people that could take the
17 appropriate actions to mitigate any damage.

18 Q. Sir, why did you feel that it was important to flag this
19 type of information, particularly the historical information about
20 our Soldiers that were killed or injured?

21 A. Well, in a case of, you know -- in the case of PII, I think
22 we had some legal obligation when PII data is released out into the
23 open as a result of government activities. In the case of medical

1 data, the concern was two-fold. First of all, we needed to provide
2 warning to families who may have to relive events that were very
3 uncomfortable and significant emotional events as a result of their
4 loved ones either losing an arm or a leg. So we tried to identify
5 that as quickly as we could, get it back into the particular service
6 and allow them to continue to help that family work through this and
7 to give them some warning before they open up their Internet computer
8 and have to relive a very unfortunate event. The second thing is
9 that, if you recall this particular database was largely based on
10 first reports. It's spot reports SIGACTs. It's that first report
11 off the battlefield and every single death on a battlefield gets
12 investigated and a body of knowledge comes together so that you
13 inform that family as to what really happened to their loved out
14 there on the battlefield. That first report is not always the most
15 accurate. So we wanted to make sure that we gave the services a
16 quick opportunity as they could to get that data to the family and
17 bring them in and warn them that they don't be misled by what's going
18 to hit the Internet when the next release comes out. So that was our
19 attempt, just to try to save the emotional impact from Soldiers who
20 had already lost family members or lives.

21 Q. Sir, in reference to attaché operations?

22 ADC[MAJ HURLEY]: Major Fein, if I may interrupt you. Ma'am,
23 just again, just our 1001(b)(4) ----

1 MJ: Got it.

2 ADC[MAJ HURLEY]: ---- objection.

3 Q. Sir, in reference to the attaché operations, you testified
4 earlier in your capacity as the DCHT Director that you oversaw
5 attaches. What are the general responsibilities of defense attachés?

6 A. A defense attaché either represents a service or represents
7 a Department of Defense as a representative to a foreign government.
8 In particular, they are the interlocutor with the Ministry of Defense
9 or a foreign military, Army, Navy, Air Force or Marine. They
10 coordinate activities. They coordinate visits. They coordinate
11 cooperation. They work security assistance. They build
12 relationships that help us grow together as coalition partners and
13 militaries. So their job involves an incredible amount of liaison
14 with the local ministry of defense or service.

15 Q. Sir, how do -- if at all, do defense attachés collect
16 information important to the Department of Defense?

17 A. Well, in that conversation they learn things no different
18 than a Soldier out on the battlefield who's been talking to the local
19 police chief. He captures things. So defense attachés do, in fact,
20 capture information and they let us have an understanding of how a
21 particular Ministry of Defense feels. I mean, what's their position
22 on a particular issue? Do they want to buy this new weapon system?

1 Do they want to buy it. So all of that comes back in reports and
2 dialogues and that adds to the body of information that we contain.

3 Q. Sir, as you -- in your role as the Director of DCHC, were
4 you familiar with the impact that the disclosures had on defense
5 attaché operations?

6 A. I was. Very much so.

7 Q. And how are you familiar, sir?

8 A. I'm familiar because there were a number of attachés in a
9 number of different countries whose relationship and ability to
10 interact with that country was either stopped, it was minimized, it
11 degraded or it was, you know, their ability to do their job ----

12 MJ: Yes, Major Hurley?

13 ADC[MAJ HURLEY]: Yes, ma'am. I'm sorry to interrupt you
14 General Carr. We would reiterate our objection, our hearsay
15 objection and this information, we don't believe, is otherwise
16 admissible. It is the position of defense, this is inadmissible
17 hearsay. So under 703 we would request that the Court do the
18 probative value -- essentially, the 403 analysis that's required
19 under 703 to determine if the sentencing authority should hear this
20 information or not.

21 MJ: Major Fein, is the information hearsay?

22 TC[MAJ FEIN]: Ma'am, may we have a moment?

23 MJ: Yes.

1 [There was a brief pause while the trial counsel consulted with co-
2 counsel.]

3 TC[MAJ FEIN]: Ma'am, the United States contends, first, it is
4 hearsay but it is the same subject matter that was relied on by other
5 experts in this field, General Carr ----

6 MJ: That's not my issue. Hearsay, then, under R.C.M. 703 does
7 the government -- what is the probative value in helping me evaluate
8 the opinion?

9 TC[MAJ FEIN]: Ma'am, the probative value here is that as
10 General Carr was the head of the entire attaché system as the
11 Director of DCHC, he's offering his opinion on whether that system
12 was impacted.

13 MJ: No, he's not. He's giving factual information that's
14 hearsay right here. You haven't elicited an opinion.

15 TC[MAJ FEIN]: Yes, ma'am, but I'm building up to that,
16 actually. This is the foundational elements of that opinion on how
17 he knew this information and how he could give an opinion on its
18 effect.

19 MJ: Why don't we do this? I'm going to sustain the defense
20 objection. Let's just get to the opinion ----

21 TC[MAJ FEIN]: Yes, ma'am.

1 MJ: ---- and if it comes up on cross-examination, you can start
2 doing this on redirect and this is true for all of the factual
3 matters.

4 TC[MAJ FEIN]: Yes, ma'am.

5 **Questions continued by the trial counsel [MAJ FEIN]:**

6 Q. Do you have an opinion about whether the attachés you were
7 responsible for were affected by the WikiLeaks releases?

8 A. Yes.

9 Q. How confident, sir, are you on that opinion?

10 A. I am extremely confident because it was the data that was
11 reported up through the system.

12 Q. And, sir, what is your opinion about how the attachés
13 across-the-board that you were responsible for were affected by the
14 WikiLeaks releases?

15 A. I think there were a number of them affected, that they
16 were affected in many very different ways. Some of them were
17 absolutely sealed off for a period of time until that confidence
18 could be rebuilt. Others had only smaller impacts and, you know, a
19 degradation of access and ability to do their job. But it went
20 across a broad swath. As you can imagine the number of countries in
21 the world but not every country was mentioned immediately in the
22 WikiLeaks. But each one took it individually because they were

1 affronted by the data that was now public about them and their
2 relationship with the United States.

3 Q. Yes, sir. And why, sir, then -- well, is that a concern of
4 yours, sir, with that impact?

5 A. Well it certainly is a concern of mine because I need to
6 maintain those relationships for a whole number of reasons. In some
7 cases, we had troops on the ground in various countries that we
8 needed to maintain contact with and we needed to know that we had the
9 full support of that host nation. A classic example would be
10 Pakistan. We needed ----

11 Q. Sorry, thank you. Just based off the Court's previous
12 ruling for the defense, we'll just move on from here. Sir, now, I'd
13 like you to focus your attention on information sharing. Sir, why is
14 information sharing so important to the intelligence defense, DoD
15 intelligence community?

16 A. Well, it's critical in the sense that if we're talking
17 about Intel sharing, then it's critical that a Senior Intel Officer
18 at whatever level is providing his commander the best assessment and
19 the best information available based on an all source conclusion.
20 You don't want to know that you're only getting 70 percent of the pie
21 as you go in and tell the story. You could be -- Absent critical
22 factors that might change your conclusions and, ultimately, could
23 affect the decisions that a commander would make. So having

1 confidence that the necessary information is being shared up and down
2 the chain appropriately as well as laterally across the various
3 agencies and funneling into that J2 is critical to success.

4 Q. Sir, how is the intelligence -- how has intelligence shared
5 within the U.S. government changed post 9-11, sir? Well, up until
6 the WikiLeaks releases.

7 A. I mean, post 9-11, the system began to move in amazing ways
8 to ensure that information got to the people that could need it to
9 help both defend the United States as well as in those areas where we
10 had troops in harm's way. So across the board you begin to see more
11 and more instances of pipes and information flows being opened so
12 that people could have the confidence that they had the best
13 information that our nation could provide into the right hands and as
14 we got deeper and we became -- we became you know, as you go through
15 something like a war, you get better and you do things better and
16 better. So that continued to move forward in a number of ways that
17 were very positive.

18 Q. Sir, did you experience or observe any impact information
19 sharing with the United States Government after Private First Class
20 Manning's compromising?

21 A. I did.

22 ADC[MAJ HURLEY]: Pardon me, sir.

23 MJ: Yes.

1 ADC[MAJ HURLEY]: Ma'am, we object. 1001(b)(4). If the
2 witness is going to talk about and I'm assured from our pretrial
3 interview he is, a choice of the federal government to do one thing
4 or another, we would submit that the sober decision of the U.S.
5 Government policy makers is not directed related to or resulting from
6 PFC Manning's misconduct.

7 MJ: All right. You can put that in your filing. I've got that
8 down. It's the objection we talked about before. I'll hear the
9 evidence and if I find it doesn't fall within R.C.M. 1004 I will
10 disregard it.

11 ADC[MAJ HURLEY]: Thank you, ma'am.

12 MJ: Go ahead.

13 **Questions continued by the trial counsel [MAJ FEIN]:**

14 Q. Sir, in your experience or did you experience or observe
15 after Private First Class Manning's disclosures, an impact to the
16 information sharing within the U.S. Government?

17 A. I don't have a -- The answer to the question is absolutely
18 yes. What you have is you have a reluctance. You have people making
19 a reluctance to provide that information down to the lowest levels
20 because they no longer trust the folks that are working that
21 information from protecting it and, therefore, protecting their
22 ability to continue to get that information.

1 Q. And, sir, why is trust so important in this process of
2 information sharing within the U.S. Government?

3 A. Trust is absolutely critical. In some cases, there's
4 millions of dollars of investment that go in to get a particular
5 capability and we need to ensure that we take the appropriate actions
6 to protect that so that that capability will be sustained and
7 provide goodness and value over a long period of time. The other
8 aspect, there's the trust and confidence that our own folks that are
9 going into harm's way have not been betrayed as a result of release
10 of information that now provides an adversary advantage and then in
11 the HUMINT world, again, as we mentioned earlier, you have a
12 responsibility to protect your source and if all of the sudden, if
13 the information that they're providing then gets released into the
14 open and the adversary can figure out -- the counter-intelligence
15 agencies of other foreign countries can all of the sudden figure out
16 who these sources are. It's a nasty world and their ability to
17 continue to do that will not be there and in some cases, in some
18 countries their life will be in harm.

19 Q. Sir, how much of your military career have you been
20 involved with access to classified information?

21 A. My entire career.

22 Q. During your career, sir, did you also supervise personnel
23 who had access to classified information?

1 A. In nearly every assignment.

2 Q. Did that include junior enlisted personnel?

3 A. Absolutely.

4 Q. And, sir, in your experience, were they -- were junior

5 enlisted personnel and even junior officers, senior officers, senior

6 enlisted generally committed to protecting classified information

7 that they have access to?

8 A. Absolutely.

9 Q. And why did you not question that commitment, sir?

10 ADC[MAJ HURLEY]: Objection. Relevance to this, ma'am. His

11 question.

12 MJ: Overruled on that. Go ahead.

13 Q. So, sir, the question is: Why didn't you question that

14 commitment, sir, of everyone who worked for you or you worked with on

15 protecting classified information?

16 A. Loyalty, performance, the need to have the information to

17 do their job, continued demonstration of capabilities and basically

18 commander's confidence in them. There are cases where we had to

19 remove individuals from access to classified information and you look

20 for various factors that might make them more of a risk. But,

21 overwhelmingly, Soldiers provide you that confidence, that they need

22 that information to do the job and they reward you with an absolutely

23 great job.

1 Q. And why is that necessary, sir?

2 MJ: I know I didn't sustain the objection, but I've got the
3 point.

4 TC[MAJ FEIN]: Yes, ma'am.

5 Q. Sir, in your experience, were there any physical security
6 measures designed to ensure proper handling of classified
7 information?

8 A. Absolutely. There's a number of various physical security
9 measures that are put in place.

10 Q. Can you please briefly describe the types of physical
11 measures that you've experienced to protect classified information?

12 A. So, in some cases, depending on the environment you're in,
13 you may be required to physically be present with the material and
14 the two-man rule. You might have a case where it has to be locked up
15 into safes of various definition. You've got, you know, the
16 construct of a particular facility needs to be accredited in a way
17 that classified information would be there. You often have guard
18 forces that surround a facility that has classified information and,
19 of course, they have a set of rules that are put in place to provide
20 both a deterrence and confidence that classified information is
21 staying within the facility that it's supposed to be.

1 Q. Sir, with all of these different types of security
2 measures, is there any measure that could have prevented someone from
3 compromising classified information?

4 A. I don't know that any of them are necessarily foolproof.

5 Q. And why, sir?

6 A. The amount of effort would be one. You know, you could --
7 if a person has gone wrong, you could come out of a facility with
8 classified information, you know, tucked inside your sock, tucked
9 inside your cargo pocket. It could be in many different places
10 either in satchel bags or on your body.

11 ADC[MAJ HURLEY]: Ma'am, I'm sorry, General Carr. We again
12 object. In this instance, it's beyond the scope of General Carr's
13 expertise. He's not offered as an information assurance expert, he's
14 offered as ----

15 MJ: I'm going to overrule it on that. But, Major Fein, this is
16 very cumulative to what was going on in the merits a little bit.
17 Establish the point and move on.

18 TC[MAJ FEIN]: Yes, ma'am. Your Honor, for this section, one
19 final question.

20 Q. Sir, what ultimate then prevents from your experience, sir,
21 an intelligence professional from disclosing classified information
22 that they learn about?

1 A. It's their own values. It's their legal obligation. It's
2 their -- it's the trust factor that we put in. I mean, at the end of
3 the day, my head could be a SCIF and you can't stop that. The amount
4 of data that comes in that all of us start to acquire over a period
5 of time that we do our work, there's nothing that you can do to
6 prevent that accumulation of knowledge in there. You have to rely on
7 the trust and confidence of the people that, when we walk out, they
8 will do the appropriate thing and protect it.

9 Q. Yes, sir. Sir, going now, I'm sorry for bouncing back and
10 forth, but back to the IRTF. Did the IRTF -- did you direct any way
11 for the IRTF to capture its findings, its ultimate conclusions?

12 A. There was a final report that was done and signed out as we
13 closed down the IRTF in the summer of 2011.

14 Q. And was the impact to DoD complete when that report was
15 published?

16 A. No, the impact of DoD continued to beyond that.

17 Q. So, sir, why did the task force then stand down and the
18 report get published prior to that?

19 A. It was stood down because we had reviewed all the
20 documents. We had looked through them through a set of criteria and
21 attempted to understand them and understand the implication of when
22 they would come out and we attempted to quantify that, put that in
23 writing and close the task force up.

1 Q. Sir, in your opinion, was that IRTF review necessary?

2 A. It was critical to us to have confidence to continue. We

3 needed to figure out where the risks were.

4 Q. And why, sir?

5 A. It would have been morally unconscionable to have all of

6 this data out there and not have somebody take a look at it as to how

7 much risk was being placed on a U.S. Soldier or on the U.S. Intel

8 system or on, you know, our ability to continue relations within the

9 world.

10 Q Sir, if -- would the impact would have been more severe if

11 IRTF had not acted so quickly?

12 ADC[MAJ HURLEY]: Objection, speculation.

13 MJ: Do you know?

14 WIT: I do know of a couple of cases that I think it would have

15 been significantly more severe had we not acted in the way we acted.

16 MJ: All right. Overruled.

17 Q. Sir, could you please -- so, first to answer the question.

18 Would the impact have been more severe if the IRTF had not acted so

19 quickly and forcefully?

20 A. Yes.

21 Q. And why is that, sir?

22 A. I think in the particular case, when we had come to an

23 understanding and completely reviewed the 495 or the 400,000-plus

1 documents out of the Iraq files and we went to great lengths to work
2 with CENTCOM and the U.S. forces in Iraq to have a full understanding
3 and because we had that understanding of what was in there, we were
4 able to take that knowledge and go to the Iraqi government so that
5 when those documents hit, the Iraqi government wouldn't be surprised.
6 They wouldn't pull back, they wouldn't stop interacting with us.
7 They would continue to be good allies. So us working forward showing
8 that trust and confidence helped them to understand what the release
9 was going to mean and what the impacts were going to be in the press.

10 MJ: Yes?

11 ADC[MAJ HURLEY]: Ma'am, we would object and move to strike.
12 It's the same hearsay problem. None of this is within the personal
13 knowledge of General Carr in that he's only seen these reports and
14 it's helped him to this conclusion and we would ask the Court to go
15 through the same process under 703.

16 MJ: In this case, I believe under R.C.M. 703 that information
17 is probative and outweighs the prejudicial effect, but let's not
18 continue down this road.

19 TC[MAJ FEIN]: Yes, ma'am.

20 MJ: Go ahead.

21 TC[MAJ FEIN]: That was the last question for that section,
22 ma'am.

23 **Questions continued by the trial counsel [MAJ Fein]:**

1 Q. Sir, I just have two more questions just to clarify
2 something you said earlier. Hopefully, just two more. Sir, when you
3 were testifying about the duty to notify, for those individuals in
4 Iraq and Afghanistan, the foreign nationals, what type of information
5 do we typically gather from those individuals that cause the duty to
6 notify?

7 A. The type of information that you gain from these
8 individuals might be an understanding as to who in the village might
9 be an insurgent. It might be to understand who might be threatening
10 that village. It's an understanding of where this village leadership
11 or the police chief needs help with his security, what kind of
12 vulnerabilities he has where he needs help. So it's a set of
13 information that they share with us so that we can work together to
14 better their situation and to allow them to maintain security.

15 Q. Sir, why is that important to our national security and war
16 fighting mission?

17 A. Because we are over there trying to build them up to the
18 point where they can take their security and then we can come home.
19 So we need to keep that forward momentum. We need to keep that
20 dialogue up and we need to protect folks.

21 TC[MAJ FEIN]: Thank you, sir. Your Honor, no further
22 questions.

1 MJ: Defense, would you like a recess before cross-examination?

2 ADC[MAJ HURLEY]: No, we can drive on, ma'am.

3 MJ: All right.

4 **CROSS-EXAMINATION**

5 **Questions by the assistant defense counsel [MAJ Hurley]:**

6 Q. Good afternoon, General Carr.

7 A. Good afternoon.

8 Q. We're going to start off talking about your experience in
9 the -- working for the United States Government. You worked for the
10 United States Governments for years?

11 A. For 31 years, yes.

12 Q. You worked in the Department of the Army?

13 A. I was a member of the Department of the Army. I obviously
14 had assignments with joint organizations and other services as well.

15 Q. You draw a government pension?

16 A. I do.

17 Q. You now work for a government contractor?

18 A. I do.

19 Q. That contractor is Northrop Grumman?

20 A. It is.

21 Q. You're the Lead Executive for Fort Meade?

22 A. Corporate Lead Executive for the Fort Meade area and
23 Aberdeen Proving Ground.

1 Q. And your military experience was vital to getting you that
2 position?

3 A. I suspect it was.

4 Q. You worked in the intelligence field your entire career?

5 A. I was a member of the Intelligence Corps my entire career.
6 I did have some assignments that were outside the Intel field.

7 ADC[MAJ HURLEY]: Ma'am, if I can stop for a second. General
8 Carr. Ma'am, I don't need to repeat my questions that I asked on
9 voir dire, do I? I mean, we can use those for ----

10 MJ: Yes, yes.

11 ADC[MAJ HURLEY]: Just to avoid that, I have them written down
12 to save us some time.

13 Q. First, let's talk about these conversations with local
14 nationals that show up in the CIDNE reporting, both CIDNE-I and
15 CIDNE-A, right? So, sir, there were names listed in those reporting?

16 A. In some of the reporting, yes.

17 Q. And those names were in Arabic? Those are Arabic names?

18 A. They were either Iraqi or Afghan names or whatever
19 nationality those individuals might have been.

20 Q. And we don't share an alphabet with either of those
21 countries, do we, sir?

22 A. No.

23 Q. So they're transliterated into English?

1 A. They are.

2 Q. And the other identifying information is transliterated
3 into English, right?

4 A. I'm not sure what you mean by the other identifying
5 information?

6 Q. Well, sir, let me be more specific. The village name was
7 transliterated into English?

8 A. Sure.

9 MJ: You're saying transliterated. Do you mean translated?

10 ADC[MAJ HURLEY]: Translated, yes, ma'am.

11 MJ: I didn't know if there was another word, but wasn't sure I
12 understood.

13 ADC[MAJ HURLEY]: I apologize.

14 WIT: I was struggling myself.

15 MJ: You mean translated?

16 ADC[MAJ HURLEY]: Yes, ma'am.

17 MJ: If transliterated comes out, he means translated. We got
18 it.

19 ADC[MAJ HURLEY]: Right. Thank you, ma'am.

20 **Questions continued by the assistant defense counsel [MAJ HURLEY]:**

21 Q. That information -- and not only that, but there's often
22 communication difficulties between coalition forces and local
23 national populous, right?

1 A. Sure. And we have interrogators -- We have linguists on
2 the battlefield to help us work through that.

3 Q. But even with linguists, sometimes that bridge is not
4 completely crossed?

5 A. Sure.

6 Q. So the information that gets translated, there could be a
7 misunderstanding as to the identifying information, correct?

8 A. There could be a misspelling or something like that,
9 absolutely.

10 Q. Right. For example, it could be that any of the
11 information including the SIGACTs, because we are unclassified I
12 won't use the actual information, it could be Steve works at the
13 market, but really there was a miscommunication and the true
14 information is Steve works at the shoe store? Do you see what I
15 mean?

16 A. I see what you mean.

17 Q. And do you agree that's a possibility?

18 A. I agree that it's a possibility, but that's the whole point
19 of continuing to build a body of knowledge so that you reconcile
20 those and you build enough knowledge so that the next guy coming
21 through that village has an enhanced understanding.

22 Q. But that enhanced understanding isn't always achieved, is
23 it, General Carr?

1 A. Over time it is always achieved, but there are occasions
2 where there are misrepresentations of individuals, yes.

3 Q. You talked about the SigAct reports. So in the CIDNE
4 database there are SigAct reports. Is that right?

5 A. Yes.

6 Q. And there are HUMINT reports?

7 A. Not necessarily HUMINT reports. There's SigAct reports,
8 there's Spor reports. There's other reports, but not necessarily
9 what I would refer to as HUMINT source reports. Those are put into
10 different databases.

11 Q. So they wouldn't be in CIDNE at all?

12 A. They shouldn't be.

13 Q. And you indicated on your direct examination that SigAct
14 reports were historical reporting?

15 A. They are not what one would call planning. They are
16 reports of events that just took place. You've done something and
17 now you're documenting what transpired and put it down.

18 Q. Backward looking in time?

19 A. Yes.

20 Q. And you talked about, in your testimony with Major Fein,
21 and we're going to talk about the reactions of local nationals to
22 these disclosures. You indicated the reactions were on a broad
23 spectrum?

1 A. Yes.

2 Q. From an outright refusal to talk?

3 A. There were cases where that was reported.

4 Q. To not talking for a while, but then eventually talking?

5 A. Absolutely.

6 Q. To talking but being a little concerned?

7 A. Yes.

8 Q. To continuing on as if nothing has happened?

9 A. There are cases of that as well.

10 Q. And your basis of knowledge of this are things you read,
11 right, General Carr?

12 A. Basically, things I read, things that in reporting that
13 came up that the team put together and briefed me at various staff
14 meetings.

15 Q. Right. So it's information that you consumed in your role
16 as Director of the IRTF?

17 A. Yes.

18 Q. And in Afghan especially, Afghans are not as plugged in?

19 A. This is true.

20 Q. So many people didn't know about these disclosures?

21 A. This is true.

22 Q. And continued on as if nothing had happened after these
23 disclosures?

1 A. There are a certain layer of cases of that, absolutely.

2 Q. And there was no analytic process conducted by the IRTF
3 about the reactions, was there?

4 A. [No answer.]

5 Q. So, sir, perhaps my question was confusing. I can rephrase
6 it you would like.

7 A. There was an analytic process to understand and to provide
8 warning when we thought there might be a duty to notify.

9 Q. Sure.

10 A. That analytic process then kind of put a judgmental effect
11 as to whether this might be more significant or less significant.
12 You know, his name was mentioned one time and he said something,
13 probably not a big deal. This guy has been known to give up
14 insurgent's names on multiple occasions, you need to warn him. That
15 analytical judgment was put in place and sent forward. An analytical
16 judgment based on what that village's response was, was not
17 necessarily put in. What was done was, as we sent these things
18 forward, we attempted to capture feedback. So, one, we kind of
19 understood and that we would factor that into future analysis as we
20 worked through and continued to move forward with the names. As you
21 said, there were a lot of names and there's a difficulty mixing and
22 getting the names together. So you're talking about the common
23 person.

1 Q. And that mixing difficulty would occur whether you were an
2 American or a member or someone from a foreign -- so that analytical
3 problem, because of the names being translated back and forth, that's
4 a problem for Americans, right? It was a problem for the IRTF?

5 A. It was a challenge for the IRTF to solve, yeah.

6 Q. Sure. And that challenge would exist for foreign nationals
7 too?

8 A. Absolutely.

9 Q. And it would exist for our adversaries too?

10 A. I suspect so.

11 Q. Because so they would have to translate it back from
12 English to whatever their native tongue is?

13 A. Yup.

14 Q. In the analysis I was talking about when I said there was
15 no analysis done about the reactions is analysis an like this, 24
16 percent of the people that we went back to stopped talking to us.
17 Was any analysis done like that quantifying it in some way?

18 A. I don't recall capturing that percentage or number.

19 Q. So the assessment is simply some quit talking and others
20 kept talking?

21 A. The assessment is that we had evidence of cases of both of
22 those types of things happening as well as other scenarios out there.

23 Q. That fell in between those two?

1 A. That fell in between those two extremes.

2 Q. In your experience within intelligence operations, General

3 Carr, you understand there are many ways to determine public opinion?

4 A. Yes.

5 Q. Polls?

6 A. Certainly.

7 Q. Questionnaires?

8 A. Certainly.

9 Q. A census even which is, in fact, recommended for

10 counterinsurgency operations? You have to say yes or no.

11 A. A census meaning a population count or a census more like a

12 pole or a survey?

13 Q. No, a census meaning a population count.

14 A. Okay.

15 Q. Where you collect data.

16 A. If you are collecting demographic data that are associated

17 with that, then, absolutely, that would be part of counterinsurgency.

18 Q. Were any polls used in Iraq to gauge the response -- to

19 gage the response to these disclosures, to your knowledge?

20 A. There were a number of information operational activities

21 in both countries and there were a number of surveys, polls and

22 questionnaires that took place. You know, I can't pinpoint nor can I

23 cite a particular case for this, but I do believe that pieces of this

1 data might have been part of polls in the aftermath. But I don't
2 have the knowledge in my head that cites them.

3 Q. Thank you, sir. So, sir, you said there were 900 names.
4 Is that in all of the CIDNE-I and CIDNE-A?

5 A. No, I think in the Afghan database we had about 900 names
6 to deal with, I believe.

7 Q. 900, and do you recall how many were in the Iraq database?

8 A. I do not.

9 Q. So with all of those individuals whether in the Iraq or
10 Afghanistan database, you received no report that no one listed in
11 there was killed, correct?

12 A. Many of those names were of people that are already dead,
13 had died at some point in the battlefield. I remember these
14 documents span a long period of time and not just a point in time.
15 So, you know, what I don't have is a specific example of somebody
16 tying it this to this to this and he died as a result of it. No,
17 other than the one individual I talked about earlier.

18 Q. So you weren't doing the IRTF full-time in the 2010/2011,
19 timeframe, were you, sir?

20 A. I still maintain my job as the Director of DCHC probably
21 for the first 45 to 60 days of the IRTF. I've probably spend a good
22 eight hours a day on it, but, over time, I balance the two missions.

1 Q. And perhaps my question was poorly drafted. You had other
2 missions besides that?

3 A. I did.

4 Q. And one of those missions was the overall supervision of
5 defense attaché offices?

6 A. It was.

7 Q. And those offices are in embassies around the globe?

8 A. They are.

9 Q. You put out a request for information to these offices
10 about the WikiLeaks disclosures?

11 A. I didn't personally put out a request for information, but
12 my team was on the lookout for where impacts had taken place. So we
13 were reporting them back up into the consolidated system. Again, I
14 was getting briefs in the morning and again at night and I needed to
15 understand and calibrate those impacts so we could take actions.

16 Q. And you -- The defense attaché offices were asked about the
17 effects of WikiLeaks, though?

18 A. I do believe that my subordinates identified the issue with
19 their respective teams that were in the field and asked them to
20 report instances back.

21 Q. But that was not done at your direction?

22 A. It was done in the sense that as I was going through the
23 morning briefings and everything, I encouraged my team to try to

1 comprehend and understand where the impacts were taking place so that
2 we could work through them.

3 Q. And there were several lay -- were several layers between
4 you and the actual defense attaché offices?

5 A. There are.

6 Q. And getting back to your broad spectrum expression, the
7 reactions in those attaché offices fell across a broad spectrum?

8 A. They did.

9 Q. From an outright refusal to speak with?

10 A. In some cases, not all.

11 Q. To being pushed down the food chain? That's an expression
12 that I got from our interview.

13 A. Meaning you used come in routinely and meet with lieutenant
14 general so-and-so and now he refuses to see you, but he let you meet
15 with lieutenant colonel so-and-so.

16 Q. To being queried for more information about the
17 disclosures?

18 A. Absolutely.

19 Q. And to continuing on as if nothing had happened?

20 A. In some cases some countries were immune from it because
21 they weren't -- they weren't in this -- and they didn't necessarily
22 see it as an issue.

23 Q. And even in some instances there was joking about it?

1 A. There was certainly -- as you know, defense attachés live
2 in capitals around the world there were there were other attachés
3 that poked fun at us because we had this to deal with.

4 Q. Again, you use the expression it created these fractures in
5 the defense attaché offices, one thing that helped mend these
6 fractures was the personnel turnover over time, right? I'm just
7 going off what we talked about yesterday in our interview, sir.

8 A. I'm not sure. You know, personnel turnover is a routine
9 thing in the Department of Defense.

10 Q. Yes, sir.

11 A. It has its -- Obviously if there's a bad relationship, a
12 turnover could, in fact, move to a good relationship. But there's
13 also a loss of knowledge and interaction at that point in time. So
14 I'm not sure what you're trying to get at.

15 Q. Could the personnel -- The personnel turnover at defense
16 attaché office and the personnel turnover with foreign interlocutors,
17 those mutual turning over of personnel that, according to our
18 discussion yesterday, helped mend these fractures that you talked
19 about?

20 A. It's always an opportunity for a restart.

21 Q. And that opportunity was utilized in this instance?

1 A. I don't -- It's utilized in every instance. I mean,
2 whenever there's a change, you want to take advantage of that change
3 and try to build the right relationship.

4 Q. Okay. Let's talk about the duty to notify for a second.
5 In the IRTF, you believed that there was a legal duty to notify
6 legitimate HUMINT sources?

7 A. I think I referred to that as the duty to warn.

8 Q. Duty to warn? Thank you, sir.

9 A. There is a distinction we created known as duty to notify.
10 If it was a legitimate HUMINT source, if somebody had created a
11 relationship with the U.S. Government and they were operating on our
12 behalf, if we thought they were in harm's way, we had a requirement
13 to warn them.

14 Q. So, sir, you and your team searched the data, the data that
15 was disclosed?

16 A. We searched all of the data that was disclosed and we
17 looked for those things. We looked for the potential identification
18 of HUMINT source.

19 Q. And you found none that had been revealed as legitimate
20 HUMINT sources? You didn't find any legitimate HUMINT resources
21 revealed by the -- in the data?

22 A. I'm not so sure that's the case. I think what we found in
23 those names that included some folks who had previously been HUMINT

1 sources and we found some folks who, when they were in the data, were
2 not HUMINT sources at the time they were in the data. But because of
3 their cooperative relationship may have evolved to a HUMINT
4 relationship.

5 Q. But the data didn't reveal them as legitimate HUMINT
6 sources?

7 A. What the data -- No, the data didn't say, hey, this is a
8 HUMINT source. What the data showed was a cooperative relationship
9 of talking to U.S. service personnel.

10 Q. In that the duty to warn went to a duty to notify any
11 individuals that cooperated with the U.S. Government or coalition
12 forces?

13 A. We believed that -- The Department of Defense believed that
14 we had a moral obligation to protect those civilian people on the
15 battlefield that were cooperating and helping our efforts.

16 Q. And you pushed that assessment to the USCENTCOM?

17 A. We worked on those assessment collaboratively between the
18 IRTF and USCENTCOM. We pushed them down and then they pushed them
19 forward to the battlefield.

20 Q. And they did that -- based on your experience and training,
21 they did that probably through what, a fragmentary order?

22 A. Exactly.

1 Q. And you received back reports from USCENTCOM as to how the
2 notifications were going?

3 A. We received feedback on what happened as a result of those
4 fragmentary orders that CENTCOM sent out, exactly.

5 Q. Some people were notified?

6 A. Some people were.

7 Q. Some people couldn't be found?

8 A. Some people couldn't be found. Some people were determined
9 to already be dead.

10 Q. Some were in some places that were deemed too dangerous to
11 send Soldiers?

12 A. Some folks were in places where we determined that, that
13 individual was more part of the insurgency today than they were part
14 of our cooperative effort and it was not worth risking Soldiers'
15 lives to go make that notification.

16 Q. To amplify on that, some were assessed as playing both
17 sides?

18 A. Some were assessed as playing both sides.

19 Q. And those individuals were not contacted?

20 A. I don't know that all of them. Many of them. That was a
21 decision by the commander on the battlefield who tried to play out
22 that moral obligation that we thought we had as Americans and at the
23 same time protect his Soldiers from operations harm.

1 Q. So -- I'm just going back to the more overall picture,
2 General Carr. You made these assessments/judgments in 2011?

3 A. Between the 2010/2011, timeframe, yes.

4 Q. I'm sorry, General Carr. I'm going to ask you one more
5 question about the defense attaché office.

6 A. Sure.

7 Q. We talked yesterday in an interview. Is that right?

8 A. Yes.

9 Q. In that interview, you indicated that the effects in the
10 defense attaché offices were short-term effects?

11 A. I don't know the -- they were certainly more immediate
12 effects. As I said, when this -- when we closed up the task force,
13 it didn't necessarily mean that effects didn't continue. I think
14 there were some in the attaché business that were, in fact, short-
15 term. Others had more of an intermediate to long-term nature to it.

16 Q. So you were overseeing the defense attaché -- pardon me,
17 the defense attaché function up until you left active duty?

18 A. I was, yes.

19 Q. And there were relationships that had been affected?

20 A. There were.

21 Q. But some of those had returned to normal before you left?

22 A. Yes.

23 Q. But some of them hadn't?

1 A. Yes.

2 Q. In the assessments that you've done now, you haven't

3 assessed whether locals and nationals in Afghanistan are currently

4 affected by these WikiLeaks disclosures, have you?

5 A. I do not know the answer, whether they're currently

6 affected today, no.

7 Q. And you haven't made an assessment with respect to Iraqi

8 cooperation with U.S. Government personnel today to date?

9 A. To date, no.

10 Q. Sir, let's talk about Intelligence Analysts for a second

11 and this is in your experience and your expertise. Intelligence

12 Analysts put information together? They coalesce information?

13 A. They do and attempt to make analytical assessments and

14 judgments from that body of knowledge.

15 Q. And that takes training?

16 A. It does.

17 Q. It also takes experience?

18 A. Certainly one would expect to improve with experience, yes.

19 Q. As in all things to improve with experience.

20 A. Sure.

21 Q. Not just anybody can do it?

22 A. I would agree.

23 Q. It takes skill to connect the dots?

1 A. It takes training.

2 Q. And predicative analysis itself is a learned skill?

3 A. Analysis is definitely a learned skill.

4 Q. Let's talk about -- you indicated that on direct

5 examination that sometimes it's appropriate to remove people who have

6 security clearances. What's a DEROG?

7 A. Derogatory information I would assume you're referring to.

8 Q. And, if you would, describe it briefly for the Court.

9 A. Derogatory information might be information that's known

10 about a particular individual that would cause one to be concerned

11 about their reliability. So you might take steps to mitigate the

12 risk.

13 Q. By submitting a derogatory information report?

14 A. You could submit a derogatory information report and the

15 example would be if, depending on your level of access you have and

16 the security clearance that you're granted, if you were to get a DUI,

17 that would constitute a derogatory information report being submitted

18 into the system.

19 Q. And intelligence leaders -- and by leaders I mean NCOs and

20 officers, have a responsibility to ensure Soldiers are qualified to

21 maintain a security clearance?

22 A. They certainly have a responsibility to oversee those

23 subordinates that have a security clearance and if there are

1 indicators such as a DEROG and other things, then they would take the
2 appropriate steps.

3 Q. And they have a responsible to take those appropriate steps
4 when they know about them, correct?

5 A. Yes.

6 Q. Getting back to Intel Analysts generally and perhaps
7 Soldier supervision generally, junior Soldiers, be the Intelligence
8 Analysts or whatever, they need the right tools, right?

9 A. Yes.

10 Q. They need the right leadership?

11 A. They do.

12 Q. At the NCO level?

13 A. Yes.

14 Q. And at the officer level?

15 A. Yes.

16 Q. You talked about the potential harm to Servicemembers'
17 families that could result from reading about their death through
18 these disclosures. Do you recall that?

19 A. I do.

20 Q. So the disclosed data did include some information about
21 the deaths of Servicemembers?

22 A. I believe it did.

1 Q. And family members could ostensibly review this data if it
2 was publicly available?

3 A. You know, at some point if it was released out onto the
4 web, I suspect family members could run the appropriate search tool
5 and find the data, yes.

6 Q. And these initial reports may be inconsistent with what
7 they were told?

8 A. The initial reports are just that, they're initial reports
9 and often, you know, as I've said earlier, every death is
10 investigated and families are informed of how that went through and
11 it includes more than just an initial report, but it includes the
12 entire body of knowledge.

13 Q. It could also be that the disclosed information was
14 consistent with what the families were told, right?

15 A. Could be.

16 Q. Because initial reports not only are they sometimes wrong,
17 but they're also sometimes right?

18 A. You're absolutely right.

19 Q. And the family's confidence in the United States Government
20 could have been buoyed by this information? Something happened and
21 the Army told me the truth?

22 A. Could be.

1 Q. Let's talk about tactics, techniques and procedures and the
2 enemy and I'm going to use the common acronym TTPs.

3 A. Yes.

4 Q. Perhaps I'll transliterate it. Enemies -- Our adversaries
5 in the field can watch our TTPs, right?

6 A. Yes, they can.

7 Q. If you put in an IED, IED is sort of a modern term for what
8 is essentially a mine, isn't it?

9 A. Okay.

10 Q. And mines always needs to be over watched?

11 A. Check.

12 Q. And they can adapt -- The adversary can adapt their TPPs
13 based on what they see in coalition forces, right?

14 A. This is true.

15 Q. They're constantly adapting their TTPs?

16 A. They are.

17 Q. And we're constantly adapting our TTPs?

18 A. We do.

19 Q. What is true today in the intelligence world may not be
20 true tomorrow, right? Things that change rapidly?

21 A. Assessments change as you gather more information, this is
22 true.

1 Q. And what's true -- what was true today that's not
2 necessarily true tomorrow may certain not be true 2 years from now?
3 Is that possible?

4 A. It's possible.

5 Q. Let's talk about the enemy real quick. The enemy that we
6 face or -- you served as a J2 in Afghanistan?

7 A. Yes.

8 Q. You had to come to assess the local populous?

9 A. I did.

10 Q. To one degree or another?

11 A. Yes.

12 Q. Afghanistan struggles with a high degree of illiteracy?

13 A. It does.

14 Q. Iraq also struggles with a high degree of illiteracy?

15 A. Less so.

16 Q. But it's still problematic?

17 A. I don't know the percentage in Iraq. I think they were one
18 of the more educated societies, to tell you the truth. But certainly
19 Afghanistan is in a different situation.

20 Q. And that, in part, explains something you testified earlier
21 about with Afghans being less plugged in than their Iraqi
22 counterparts?

23 A. Yes.

1 Q. Did you ever coordinate in your role as the Director of the
2 IRTF with the Center for Army Lessons Learned?

3 A. I did.

4 Q. Did you ever call for any rapid adaptations to be issued
5 from the Center for Army Lessons Learned?

6 A. I don't think that we did this through the Center for Army
7 Lessons Learned. I think they were done more through the CENTCOM
8 Headquarters and not through the Center for Army Lessons Learned.
9 There were a couple of cases where we identified potential areas that
10 CENTCOM may want to take a look at and either adapt their practices
11 or take a fresh look at them.

12 Q. And you passed that information along to the USCENTCOM?

13 A. We passed that information along to USCENTCOM. We did not
14 make that judgment. We did not make those decisions. We identified
15 where there were risks.

16 Q. You talked with the government in your direct examination
17 about your review of the JTF GTMO information?

18 A. Yes.

19 Q. Did you look at the facts that -- you understand that
20 there's a good deal of litigation that's gone on with respect to
21 those particular individuals at JTF GTMO?

22 A. I do know there's a litigation process. I can't explain it
23 all, but I do understand that there's a litigation process.

1 Q. Did you ever review any of those court filings to see what
2 information was disclosed in those court filings versus what
3 information you had in the detainee assessment briefs?

4 A. As part of the IRTF, I do not recall having gone through
5 that. I know that, over time, there has been a significant amount of
6 data that's been passed into the legal process.

7 Q. You testified on direct that you were trying to move people
8 out of the detention center at JTF GTMO?

9 A. There were processes to lower the population down there,
10 yes.

11 Q. And that was an administration priority?

12 A. I don't know where it fell on the -- where it was exactly
13 on the priorities, but there was a State Department Ambassador that
14 had the primary responsibility of repatriating folks out of GTMO.

15 Q. There was substantial resistance in repatriating people out
16 of GTMO from inside the United States government, correct?

17 A. I don't know that I'm ----

18 Q. Do you have any knowledge about whether or not the
19 legislators on Capitol Hill were for or against closing the detention
20 center?

21 A. I think there was probably a number of public statements
22 out there made between the various parties. I talked to -- some want

1 to keep it open and some want to close it. I don't know that that
2 ever came into the discussion with the IRTF.

3 Q. Now, we're getting to that ambassador that you were talking
4 about from the Department of State that you talked to. You recall
5 talking to him a couple of times on the phone?

6 A. I did.

7 Q. And you recall that there were meetings between your
8 subordinates and either him or his subordinates, so lower level
9 meetings?

10 A. I certainly wouldn't call a meeting with the ambassador a
11 lower level meeting. But I personally did not go over a brief him.
12 I had subordinates on my team that went over a brief. Again, my job
13 there, what we were trying to do was to understand the potential of
14 that information making it out and trying to let the individual
15 responsible for his government activities be forewarned and take
16 steps to protect the government.

17 Q. So you were told about the delta, that's the word you used,
18 between what the United States Government had told foreign
19 governments that we were trying to give these detainees to? You were
20 told about that delta, right?

21 A. I was told that there is a delta.

1 Q. And you were similarly told there's a delta between what --
2 the information we gave to the foreign governments and then the
3 information that the foreign governments relay to its people?

4 A. What I was told is that the information exchange between
5 two governments might contain more information than what was in a
6 public press statement. Again, a lot of classified information
7 transmitted and then there is a public press statement that goes out
8 to the people,

9 Q. We're going to talk about the loss that accrued as a
10 result of these leaks. Leaked information can show vulnerabilities
11 in weapon systems?

12 A. It certainly can.

13 Q. And communications platforms?

14 A. It certainly can.

15 Q. And vehicles, ground vehicles?

16 A. Absolutely.

17 Q. And aircraft?

18 A. Yup.

19 Q. Did coalition forces stop -- But coalition forces did not
20 stop using any weapon system because of these disclosures, correct?

21 A. Not that I know of.

22 Q. And they did not stop using any communication platform
23 because of these disclosures?

1 A. I think we made some changes in communications.

2 Q. But they did not stop using any vehicles?

3 A. No.

4 Q. And they didn't stop using any aircraft?

5 A. Check.

6 Q. TTPs were given away, though, or TPPs were part of the

7 SigAct -- part of the SigAct information?

8 A. As you said earlier, somebody could over watch an IED and

9 get a TPP and all of the sudden now what we have, that individual in

10 that other Army or that other insurgency or that element that's

11 watching us, do they really have the ability that we maintain in our

12 country to spread that word out and learn that lesson across their

13 force? They don't. The release of this type of information allowed

14 people to sit at higher levels and to look through that and get a

15 cumulative understanding.

16 Q. Do those people that are over watching have the ability to

17 read oftentimes?

18 A. I'm not -- I don't know that judgment.

19 Q. There is a high illiteracy rate in Afghanistan?

20 A. There's certainly a high illiteracy rate in Afghanistan.

21 Q. We talked earlier that TTPs evolve?

22 A. They do.

1 Q. And unit SOPs, standard operating procedure, they likewise
2 evolve?

3 A. Yes.

4 Q. Evolve because of a change in technology?

5 A. One reason.

6 Q. Evolve because of a change in tactics?

7 A. Absolutely.

8 Q. And all unit TTPs are not the same? Different units are
9 going to do things different ways?

10 A. I suspect that there's some commonality as well as some
11 differences and preferences.

12 Q. And some units rarely follow their own standard operating
13 procedures, right?

14 A. I'm not prepared to say that. I think it depends on the
15 unit environment there and if there are standard operating procedures
16 they ought to be following them.

17 Q. Sir, just one second. Last line of question, General Carr.
18 Before I commit to that statement of intent, I'm going look at a few
19 notes. All right, sir. So the conversation we had yesterday again,
20 we talked about how the actual effects from these disclosures could
21 be graphed in one way, right, that they could be plotted on a graph,
22 potentially? Do you recall that?

1 A. I don't recall that discussion. I don't recall making any
2 graphs, so to speak.

3 Q. Perhaps I'm mistaken. There was -- Let me just restate the
4 question again. Then there was a lot of reaction initially to these
5 disclosures?

6 A. Yes.

7 Q And, over time, that reaction reduces, it goes -- there's a
8 level of reaction and that reaction reduces over time?

9 A. I think that -- Yes, and that action often reduces through
10 mitigation where the U.S. Government attempts to go heal whatever
11 effect or whatever that happened detrimental. We work hard to heal
12 that.

13 Q. And some of it is a result of this mitigation you talk
14 about and some of it is just a result of people moving on?

15 A. Okay.

16 Q. And, as a result, perhaps of mitigation or perhaps some
17 other reasons it reduces even more, correct, over time? So you have
18 the third step where it's even less than where it was at the second
19 spot?

20 A. I think in many cases, over time, it would. I think
21 there's some instances, depending on the severity and the impacts
22 that erosion of impact might be a little slower.

1 Q. Right, but you haven't gone back to check to see if that
2 erosion of impact is as slow as you assessed it might be in 2011?
3 A. I have not.
4 ADC[MAJ HURLEY]: Thank you, General Carr. Thanks, ma'am.
5 MJ: Is there a redirect?
6 TC[MAJ FEIN]: Yes, ma'am.
7 MJ: Is it going to be lengthy?
8 TC[MAJ FEIN]: It is not, ma'am.
9 MJ: Okay, go ahead.

10 **REDIRECT EXAMINATION**

11 **Questions by the trial counsel [MAJ Fein]:**

12 Q. In reference to your testimony just now about Afghanis
13 being plugged in and their literacy rate, sir, did the Taliban know
14 this information was there?
15 A. They absolutely did.
16 Q. Did they seek this information?
17 A. I'm sure they did.
18 Q. In reference to the DEROGs and the questions the defense
19 asked you about DEROGs, in your experience, sir, in your 31 years,
20 have Intel Soldiers that at least worked for you committed minor
21 misconduct and received counseling but not been DEROGed?
22 A. Absolutely.
23 Q. And why, sir?

1 A. As you said, the minor misconduct didn't reach the level of
2 warranting a requirement to put in a DEROG report and through
3 counseling the leadership chain gained confidence that it was a one-
4 time error and was not going to be a vulnerability in the future.

5 Q. And, sir, as far as your testimony just now about the
6 information, specifically the Iraqi/Afghani names, a lot of it in
7 Arabic within SIGACTs in CIDNE, could you explain for the Court that
8 vetting process that you've alluded to? I guess before that, did the
9 IRTF just take a single report and then credit a duty to warn?

10 A. No.

11 Q. Excuse me, duty to notify?

12 A. No.

13 Q. What was the process to vet those names in order to create
14 that duty?

15 A. Yes, so, we used an incredible amount of technical tools to
16 try to make sure that we drew all the particular records associated
17 with the many variable ways that a particular name could be spelled
18 and then we would correlate them by location on a battlefield or
19 something. We went to great efforts to find out that, you know,
20 five, six, seven names would come down to a single name and, yes, it
21 was. It was the guy that ran the shop who's now the village police
22 chief or something. So it was a huge effort and a time expenditure
23 and a cost expenditure in a sense to try to make sure that we were

1 providing the best understanding of that data to forward forces
2 because at the end of the day the forward force had to make a
3 decision to put folks in harm's way to go make that notification.

4 Q. And, sir, on those SIGACTs were grid coordinates included?

5 A. In many cases there's coordinates and locations included.
6 I don't know that they're on every single one, but in many cases they
7 are, absolutely.

8 Q. And those coordinates, for the ones at least on the ones
9 with individual's names, those aren't subject to translation between
10 countries, correct?

11 A. Absolutely not.

12 TC[MAJ FEIN]: Thank you, sir.

13 **RECROSS-EXAMINATION**

14 **Questions by the assistant defense counsel [MAJ Hurley]:**

15 Q. So the Taliban has our maps? Don't you have to have a map
16 to have the grid coordinate mean anything?

17 A. I don't think I said the Taliban has our maps. I think the
18 question was does the Taliban have access to this information and the
19 answer is yes.

20 Q. The last question was it includes grid coordinates,
21 correct?

22 A. The answer, are there grid coordinates on there, yes.
23 There is also village names on there as well.

1 Q. Right. But do our adversaries have our maps? Because
2 don't you have to have a map to have a grid coordinate mean anything?

3 A. You have to have a map to have a grid coordinate mean
4 anything. You have to have a map to understand city names if you
5 don't have personal knowledge of the environment. But you're dealing
6 with an element that understands a lot about the local environment.

7 Q. So you said there were 900 names, 900 or so names in the
8 CIDNE-A database. Is that about right?

9 A. I think I said in the Afghan database we were dealing with
10 something in the neighborhood of 900 names.

11 Q. Is that number there before or after you filtered through
12 the process you were talking about just now with Major Fein?

13 A. I think that was the number that we got to after we
14 filtered through the process.

15 Q. Let's talk about derogatory information reports real quick.
16 Have you ever had to file a derogatory information report?

17 A. I have.

18 Q. Without identifying the person that you filed it on, have
19 you had to file more than one?

20 A. Absolutely.

21 Q. Again, without tying it to a specific person, what's the
22 type of information that you've had to file derogatory information
23 reports on?

1 A. DUIs, positive testing on urinalysis, events such as that.
2 Maybe domestic battery cases would cause one to meet that threshold.

3 Q. And with domestic -- in your cases was law enforcement
4 always involved when you would file a derogatory information report?
5 The cases you cited all seem to contemplate the involvement of law
6 enforcement?

7 A. I think those particular cases all have law enforcement
8 involved.

9 Q. But one person responsible could file a derogatory
10 information report not having law enforcement involved, right?

11 A. I think there are probably events that could take place in
12 units that meet the threshold without having to have law enforcement,
13 yes.

14 Q. A history of outbursts from a particular person with a
15 security clearance?

16 A. A history of outbursts and workplace violence would
17 certainly meet that threshold.

18 ADC[MAJ HURLEY]: Thank you, sir, nothing further.

19 MJ: Any final redirect from the government?

20 TC[MAJ FEIN]: No, ma'am.

21 MJ: I have one -- a couple of questions.

22

23

1

2

3

6

7

8

9

10

11

12

13

15

16

21

1 mental health, what if any impact does that have on the security
2 clearance?

3 A. That has changed over time and so I think there were points
4 in time when a referral of that nature might have caused someone to
5 be removed from the environment. But I think the system has adapted
6 over time to judge each case independently and try not to prevent
7 them from going to get behavioral treatment or counseling for fear of
8 losing their jobs. So this system is trying to encourage that mental
9 health and that -- without causing people to be fearful of it and
10 losing their jobs. So they're trying to adapt that.

11 MJ: Thank you. Any follow up based on that?

12 TC[MAJ FEIN]: No, ma'am.

13 **RECROSS-EXAMINATION**

14 **Questions by the assistant defense counsel [MAJ Hurley]:**

15 Q. General Carr, if I asked you -- if I gave you a regulatory
16 number, might that jog your memory as to where this DEROG information
17 is located?

18 A. I doubt it seriously.

19 Q. Well, let's just give it a stab. How about Army Regulation
20 380-67?

21 A. I believe it would be in the 380 series. AR 380 often has
22 a number of personnel security rules inside it, whether it is 67 or
23 not doesn't come to my mind at this point.

1 ADC[MAJ HURLEY]: Thank you, sir. Thank you, ma'am.

2 MJ: Temporary or permanent excusal?

3 TC[MAJ FEIN]: Temporary, ma'am.

4 **[The witness was duly warned, temporarily excused and withdrew from**

5 **the courtroom.]**

6 MJ: Just to be clear, for the record, I'm not going to -- I'm

7 going to completely disregard any testimony about the Taliban killing

8 somebody in accordance with the leak, and tying it to the WikiLeaks

9 where the name of the individual was not released.

10 ADC[MAJ HURLEY]: Yes, ma'am. And I was just going to only

11 pose a question to the Court. Is there anything else that you need

12 from us other than our filing with respect to the issues that we have

13 identified?

14 MJ: Well, just identify the issues in your filing.

15 ADC[MAJ HURLEY]: Yes, ma'am. Other than the filing, nothing

16 else, ma'am. Is that right?

17 MJ: No, that's fine.

18 ADC[MAJ HURLEY]: Thank you.

19 MJ: All right. We have another witness to go through today.

20 TC[MAJ FEIN]: Yes, ma'am.

21 MJ: And we will do that. How long of a recess do we need?

22 TC[MAJ FEIN]: May we have a 15-minute recess, ma'am, and then

23 we're ready to call Mr. Kirchhofer.

1 MJ: All right. Does that work?

2 ADC[MAJ HURLEY]: Yes, Your Honor.

3 MJ: All right. The court is in recess for 15 minutes.

4 **[The court-martial recessed at 1546, 31 July 2013.]**

5 **[The court-martial was called to order at 1609, 31 July 2013.]**

6 MJ: Court is called to order. Let the record reflect all
7 parties present when the Court last recessed are again present in
8 court. I met briefly with counsel in my chambers. The defense
9 counsel came to advise me that they had a chance to speak with
10 Brigadier General retired Carr with respect to whether or not there
11 was a prepared statement for his congressional testimony.

12 CDC[MR. COOMBS]: Yes, Your Honor. I spoke with General Carr.
13 He indicated that although he's aware of the statement, he did not
14 put any information into the statement. So he didn't participate in
15 the preparation of the statement, nor did he sign off on it. I asked
16 him if he had any other statements from his previous testimony to
17 Congress. He said no.

18 MJ: All right. So does that satisfy the defense that there's
19 no outstanding R.C.M. 914 matter out there?

20 CDC[MR. COOMBS]: Yes, Your Honor, it does.

21 MJ: And, government, I understand you're continuing to seek
22 this information from the expert witnesses you have coming in?

23 TC[MAJ FEIN]: Yes, ma'am.

1 MJ: Is there anything else we need to address before we
2 continue on?

3 TC[MAJ FEIN]: No, ma'am.

4 CDC[MR. COOMBS]: No, ma'am.

5 MJ: Proceed.

6 TC[MAJ FEIN]: Ma'am, the United States calls Mr. John
7 Kirchhofer.

8 **JOHN KIRCHHOFER, civilian, was called as a witness for the**
9 **prosecution, was sworn and testified as follows:**

10 **DIRECT EXAMINATION**

11 **Questions by the trial counsel [MAJ Fein]:**

12 Q. Sir, you're Mr. John Kirchhofer for the Defense
13 Intelligence Agency?

14 A. Yes, sir.

15 Q. And you are a member of the Senior Executive Service?

16 A. That's correct.

17 Q. And, sir, prior to beginning, you understand that you're
18 here today to discuss your expertise in strategic planning for
19 Department of Defense Counterintelligence and HUMINT functions?

20 A. Yes.

21 Q. And based off that, sir, also, are you prepared today to
22 provide specialized knowledge to assist the Court in understanding
23 the operation of the IRTF and the impact by the WikiLeaks disclosure?

1 A. Yes, I am.

2 MJ: Are you going to be qualifying this witness as an expert?

3 TC[MAJ FEIN]: The United States does intend to qualify ----

4 MJ: In what?

5 TC[MAJ FEIN]: In the field, Your Honor, of strategic planning
6 for the Department of Defense counterintelligence and HUMINT ----

7 MJ: Hold on. Strategic planning ----

8 TC[MAJ FEIN]: For DoD, CI and HUMINT, counterintelligence and
9 HUMINT intelligence.

10 MJ: So strategic planning for DoD, ----

11 TC[MAJ FEIN]: No, ma'am. I'm sorry. It's Department of
12 Defense counterintelligence and Department of Defense HUMINT. So I
13 said DoD, CI and HUMINT. One field, Your Honor.

14 MJ: Thank you.

15 TC[MAJ FEIN]: Yes, ma'am.

16 **Questions continued by the trial counsel [MAJ Fein]:**

17 Q. Sir, what is your current position at the Defense
18 Intelligence Agency?

19 A. I'm the Deputy Chief Financial Officer for DIA.

20 Q. And how long have you been the Deputy Chief Financial
21 Officer, sir?

22 A. Only 2 months.

23 Q. And how long have you worked at DIA?

1 A. I've been with the Agency since August of 2008.

2 Q. And how did you first become associated with the WikiLeaks

3 disclosures?

4 A. When -- On the 28th of July, the Secretary of Defense asked

5 the Director of DIA to stand up an effort to review what had been

6 compromised and what potentially was going to be compromised. So we

7 stood up a task force immediately. About 3 days in, once they

8 started to realize the scope of it, they started pulling in

9 additional people and I was in that second wave that came in on the

10 2nd of August.

11 Q. And when you were pulled in, sir, what was your position on

12 the IRTF?

13 A. I was the Deputy Chief of the IRTF.

14 Q. And so now we'll talk about the IRTF a little bit later,

15 sir. Really just now focused on your background. When you were

16 pulled in to the IRTF, what position did you hold or what position

17 did you hold before becoming the Deputy Chief Financial Officer?

18 A. I was the Deputy Chief of the Office of Counterintelligence

19 at DIA.

20 Q. And how long were you in that job for, sir?

21 A. Just shy of a year.

22 Q. And what position did you hold prior to becoming the Deputy

23 Chief of the Counter ----

1 A. Office of Counterintelligence?

2 Q. Yes, Office of Counterintelligence.

3 A. It sandwiched the IRTF effort. So before and after I was
4 the Chief of Enterprise strategies for the Defense CI and HUMINT
5 Center.

6 MJ: What was that again?

7 WIT: The Defense Counterintelligence and Human Intelligence
8 Center.

9 Q. Sir, you used the term Chief of Enterprise Strategies. Can
10 you please explain for the Court? What does that mean?

11 A. It's a DISL position, Defense Intelligence Senior Level,
12 which is reserved for grades above GS-15 with subject matter
13 expertise. So we were in charge of doing all of the strategic
14 planning for the CI and HUMINT enterprise and I can describe that if
15 you'd like. We also did performance management, lessons learned and
16 we exercised functional oversight of the budget.

17 Q. So since you offered, sir, yes. Could you please describe
18 what you mean by the CI HUMINT enterprise?

19 A. The DoD CI and HUMINT enterprise is -- an unclassified
20 figure would be under 20,000 in manpower. The bulk of the workforce
21 is in the U.S. Army in the tactical force, but it also includes all
22 of the other services, the Defense Intelligence Agency and then the
23 counterintelligence elements of other defense agencies. For example,

1 the National Security Agency has a large counter-intelligence staff.
2 That's part of the counterintelligence enterprise.

3 Q. And as the Chief of Enterprise, sir, you also said
4 performance management was one of your functions. What is
5 performance management?

6 A. Performance management is developing performance measures
7 in metrics by which we can determine how well we're performing and
8 then that informs how we're going to change the force in the future
9 or change our effort in the future to improve, constant improvement.

10 Q. And, sir, is that part of the long range planning that
11 you're responsible for?

12 A. It's part and parcel of it. So the strategic planning is
13 the whole focus of looking at future threats and in building a force
14 that's going to get us to address those strategic threats down the
15 road and performance management feeds that. If we're failing in one
16 area, what are we going to do to improve on it? Is it going to take
17 more money, more training, change the doctrine? That's all involved
18 in that effort.

19 Q. So, sir, with building a force, what force?

20 A. The CI and HUMINT force, that manpower I just talked about
21 across the enterprise.

1 Q. Sir, also, as the Chief of Enterprise Strategies, you
2 mentioned that you're responsible for lessons learned. What do you
3 mean by that? Could you provide an example?

4 A. In a very classic sense, across the Department of Defense
5 lessons learned is treated as a federation of organizations. So,
6 typically, we look to the joint staff J7 to lead the effort, but we
7 handled that specifically for the counterintelligence and human
8 intelligence disciplines. So we had our own system that fed into the
9 joint staff's system and we shared those lessons in best practices
10 across the entire community.

11 Q. And what about functional management and budgeting? What
12 does that aspect ----

13 A. Functional management is typically you have a budget tier
14 that is going to match dollars to the plan that you've built. But
15 functional management is the -- it's the intelligence portion of the
16 budget. So we don't just give dollars, we have to explain those
17 dollars. So the dollars are going to pay for personnel. They're
18 going to pay for operational funds for travel, you know, those types
19 of pockets. So it was the intelligence -- it's that functional piece
20 that gets added to the budget and that was something that I oversaw.

21 Q. Sir, you mentioned earlier that, at the time, you were a
22 DISL. What is a DISL?

1 A. A DISL, apparently many years ago they did away with GS
2 grades above the grade of 15 and they merged them into one group that
3 they call senior level. Sometimes you'll hear it called senior
4 technical level if it's in the sciences fields and so it's -- SES
5 light some people call it.

6 Q. And that, sir, is that a technical expert -- Are you a
7 technical expert when you're in a DISL?

8 A. I'm careful on the word technical, but, yes. My exact
9 position description read senior expert for CI and HUMINT enterprise
10 strategies.

11 Q. And was that -- to be selected as a DISL, is that a
12 competitive process?

13 A. Yes, very competitive. You have to do a great deal of
14 narrative development. Again, specific technical qualifications -- I
15 go back to that word now -- to prove that you have that expertise to
16 do that job, that niche expertise.

17 Q. And, sir, in your current position now, are you still a
18 DISL?

19 A. No, I'm a member of the Senior Executive Service now.

20 Q. And what is your current, at least military equivalent
21 rank, sir?

22 A. I'm a tier 2. So it's a two star equivalent.

1 Q. Thank you, sir. At this point, I'd like to have you
2 testify about your professional background. When did you first join
3 the Department of Defense?

4 A. In January of 1991.

5 Q. And what was your first job, sir?

6 A. I was a clerk-typist in a force management office with the
7 Army Intelligence and Security Command.

8 Q. Have you been a civilian for your entire career?

9 A. I have, yes.

10 Q. Then where did you move to, sir?

11 A. I did that for about a year and then I moved into a
12 position as a Human Intelligence Reports Officer and a Reports
13 Officer, I know not many people are familiar with it. It's
14 essentially taking collection requirements that have been identified
15 by analysts, making sure that the collectors in the field have those
16 requirements and know what they need to be working on. Then it's
17 taking that raw intelligence that they've gathered, putting it into a
18 report and pushing it back out to the community.

19 Q. And then where did you move, sir, after being a Reports
20 Officer at U.S. Army INSCOM?

21 A. After I left Headquarters, INSCOM, I came to Fort Meade to
22 the U.S. Army Central Security Facility and I worked in information
23 security activities.

1 Q. And what is the Army Central Security Facility?

2 A. At the time, the Central Security Facility contained the
3 U.S. Army investigative records repository and the Freedom Of
4 Information and Privacy Act Office.

5 Q. So what was your job, sir, as an Information Security
6 Specialist with that facility?

7 A. So my primary job was to review classified information to
8 determine whether it could be released to the public under the
9 provisions of the FOIA or Privacy Act.

10 Q. And then where did you move to after that, sir?

11 A. Then I went to the 902nd Military Intelligence Group on the
12 Group S3 and I helped them build a collection management and
13 dissemination element.

14 Q. And what do you mean by that, sir?

15 A. Collection management is the way we prioritized those
16 collection requirements that come in and figure out which particular
17 detachment or office could actually collect the office data we
18 needed. So it's then tasking it out to them to collect, monitoring
19 them when it comes back and, again, publishing the report back to the
20 community.

21 Q. Sir, so you build this collection management platform. Did
22 it not exist beforehand?

1 A. It did not exist beforehand. In 1995, all defense HUMINT
2 was combined into the Defense Intelligence Agency and most of that
3 capability of -- collection management capability was resident on the
4 HUMINT side. So that all went to DIA. So the Army had to rebuild
5 out of scratch in '95.

6 Q. And was that your responsibility, sir?

7 A. For that group it was, yes.

8 Q. And how long did you do that until, sir?

9 A. Until 1998. So '95 to '98.

10 Q. And then what did you do following that job as the 902nd
11 Group collection manager?

12 A. I went back to Headquarters INSCOM, at Fort Belvoir and I
13 became the Army Counterintelligence and Human Intelligence Collection
14 Manager.

15 Q. And how did job differ from what you had previously done at
16 the 902nd?

17 A. It's a higher headquarters perspective. So as opposed to
18 balancing the collection activities across specific detachments, I
19 was now balancing it across the theater MI Brigades.

20 Q. Did those belong to INSCOM?

21 A. They were subordinate to INSCOM, yes.

22 Q. And what year did you leave INSCOM and then where did you
23 go after that, sir?

1 A. In 2003, early 2003, I believe it was February, I went to
2 the Department of Defense Counterintelligence Field Activity.

3 Q. Is that what's commonly known as CIFA, sir?

4 A. Yes, sir.

5 Q. And what did you do at CIFA?

6 A. At CIFA I was a program manager for three different
7 portfolios. So I was the Chief of the Collection Analysis and
8 Functional Services Office.

9 Q. And so collection, sir, is that the same as what you've
10 already testified about?

11 A. Yes.

12 Q. And then what do you mean by the analysis of functional
13 services?

14 A. So there five functions of counterintelligence. Those are
15 three of the five that we just mentioned, so collection being very
16 traditional, much like HUMINT if you want to think of it that way.
17 Analysis and production is all source analysis but it's specific to
18 foreign intelligence threats and then the third piece is functional
19 services. It's easiest to think about that as a lead development
20 effort. So it could include polygraph, technical surveillance
21 counter measures. If you find a bug, you've got to found out what
22 you're going to do with it or it could be foreign travel debriefings

1 after you get back where you're followed to a hotel, that type of
2 thing.

3 Q Sir, I apologize. I should have said this before you even
4 started testifying. If there's any questions that are asked that
5 would elicit classified information, please notify the Court from
6 either party before answering.

7 A. Okay. Thank you.

8 Q. And we can take the appropriate steps. Sir, after -- how
9 long did you spend at CIFA as the Chief of Collection Analysis and
10 Functional Services?

11 A. I was at CIFA until 2008 when CIFA was merged into the
12 Defense Intelligence Agency.

13 Q. And what -- where did you go after that, sir?

14 A. Then I went to DIA Headquarters and that's when I went into
15 the enterprise strategies element.

16 Q. Now, sir, when you were the Chief of Collection Analysis
17 and Functional Services, did you have any requirements to brief
18 senior government officials or members of Congress?

19 A. We did because that was -- I was in the Program Management
20 Directorate. So as part of that we had to do budget roll-outs to
21 Congress. We built the strategy, the plan for we were going to build
22 to and then we built to budget around it and we would go brief that
23 to overseers to include members and staffers on the Hill.

1 Q. And can you just, in general, explain if you said --
2 explain in a little bit more detail but keeping it in general what
3 you mean by you develop the requirements and built a budget? What
4 are you actually talking about?

5 A. So at its most basic strategic planning is looking at
6 future threats and then you have to figure out how you're going to
7 mitigate those. How are you going to build a capability or maintain
8 a capability that can deal with those threats over time. So that's
9 the first step in the whole process is developing a strategic plan,
10 where you want to be, and then you start figuring out how you're
11 going to get there and that includes identifying the resources,
12 identifying the manpower, identifying training requirements, looking
13 at doctrine and policy to make sure that's up-to-date because all of
14 that has to evolve to meet the goals and objectives of the strategic
15 plan.

16 Q. So, sir -- That makes -- I -- Thank you, sir. So when you
17 merged -- when CIFA merged into DIA, when did you get picked up to be
18 a DISL?

19 A. I went into the enterprise strategies element in an acting
20 capacity in 2008. I was a GS-15 at the time. And then I was
21 promoted to DISL competitively into that in, I believe it was, April
22 of 2010.

1 Q. And how long, sir, were you then the Chief of the DIA
2 Enterprise Strategies?

3 A. Until September of 2012.

4 Q. Sir, earlier when you were talking about the general
5 responsibilities as being the Chief of Enterprise Strategies, the one
6 question I didn't ask you about was: How did lessons learned play
7 into your job there as the Chief?

8 A. Well, lessons learned is key to how you're going to impact
9 the entire DoDMLPF spectrum, doctrine, organization, training,
10 manpower, logistics -- I haven't thought about this in a while --
11 personnel and facility. Sorry. So that's one of key drivers to tell
12 you you need to change your strategic plan. If lessons learned is
13 going to flag items where we're failing or having problems, then that
14 feeds back into how you plan for the future.

15 Q. Thank you, sir. Sir, in September of 2012, where did you
16 move after being the Chief of Enterprise Strategies?

17 A. That's when I was promoted to SES and I moved down to the
18 Office of Counterintelligence at Quantico, Virginia.

19 Q. Sir, when you were the Deputy Chief of the
20 Counterintelligence Office, how large was that office that you were a
21 deputy of?

22 A. That office was, depending how you count contractors, 600
23 to 700 personnel.

1 Q. And how long were you the Deputy Chief there?

2 A. Just shy of a year. I just moved up here in June.

3 Q. What were your general duties and responsibilities as the
4 Deputy Chief of the Counterintelligence Office?

5 A. It was really day-to-day management of the office. So the
6 Chief of the office looked up and I tried to make sure that
7 Headquarters DIA was happy, that our overseers at the Director of
8 National Intelligence and USDI were taken care of and I looked down
9 and in. So I made sure all of the personnel actions were completed,
10 that we met all of our tasks. It really was the day-to-day
11 leadership and management.

12 Q. Sir, now, I'd like you to focus on your education, first
13 your civilian education outside of your time with DoD. Could you
14 please just briefly describe to the Court your civilian education?

15 A. In 1992, I got a bachelor's of arts in international
16 relations and European studies from George Mason University in
17 Virginia. In 1999, I got a master of arts in international affairs
18 from the George Washington University in Washington, D.C.

19 Q. And in a very brief way, what type of training have you
20 received within DoD?

21 A. Within DoD, I guess I could work backwards, from a
22 leadership perspective, I've gone through apex.

23 MJ: What is that?

1 A. Which is the civilian equivalent of touchstone,
2 cornerstone, the ----

3 Q. The capstone, sir?

4 A. Capstone for new general officers. So it's a civilian
5 equivalent of that. I went through the National Security Study
6 Program at George Washington University which is an office of the
7 Secretary of Defense-led, a month long program for senior leaders.
8 Early in my career, I had a lot of training in collection management,
9 force management, kind of all of those basic level training courses
10 to support the jobs I was doing. Information security, operation
11 security, classification rules, that type of training.

12 Q. Thank you, sir. Sir, have you -- in reference to the field
13 of strategic planning for DoD and HUMINT, have you ever taught in
14 that field before?

15 A. I do. I still do occasionally or did until the job I went
16 to in June. The Joint Counter Intelligence Training Academy which
17 provides all of the advanced training for military services.

18 Q. Is that JCITA, sir?

19 A. JCITA, yes.

20 Q. And how long have you been teaching up until your recent
21 job in June at JCITA?

22 A. So the JCITA training actually goes back to late '90s. I
23 couldn't give you an exact date. It's been a long time.

1 Q. And what type of courses have you taught there?

2 A. Across all levels. They have an advanced course which is
3 where we train, I'm trying to make sure I don't cross the line
4 classification wise, our case officers for offensive
5 counterintelligence operations and investigators. Surveillance,
6 counter-surveillance specialists all go through the advanced course.
7 But they also have a basic level course, counterintelligence
8 awareness, if you want to call it that, for new CI employees and then
9 I've often briefed on that.

10 Q. Sir, have you taught any type of joint staff courses?

11 A. At the Joint Military Intelligence Training Center, they
12 have the CI Awareness Course also that's kind of designed for non-CI
13 people so that they can figure out how to plug into CI. I brief on
14 that about four times a year.

15 Q. And for how long have you been briefing four times a year?

16 A. That goes back to 2008 when we merged into DIA.

17 Q. Sir, how often do you teach at JCITA that you were just
18 talking about?

19 A. The advanced course was three to four times depending on
20 the number of iterations each year that they do. That's a long
21 course. For the basic course, six to eight. Usually that depends on
22 funding, how many iterations they can do.

1 Q. And in general, sir, what type of topics are you teaching
2 within your field of strategic planning?

3 A. It's long term planning for CI and HUMINT. It's where the
4 force needs to go and how we're going to get the force there, and
5 evolve the force. So it does all go back to the planning effort.

6 Q. Sir, have you participated in any type of seminars at the
7 National Defense University?

8 A. Yes, the National Defense University runs an international
9 fellows program. I believe that's annual and I go in and participate
10 in the seminars and serve on panels for discussions.

11 Q. And who are the typical participants in those seminars each
12 year?

13 A. These are foreign general officers, typically new general
14 officers coming in to get exposure to the U.S. military.

15 Q. Sir, have you ever testified in a criminal court before?

16 A. I have not.

17 Q. Have you ever briefed members of Congress?

18 A. I have briefed members of Congress, but I have not
19 testified.

20 Q. And approximately how many members have you -- how many
21 times have you briefed members and then staffers?

1 A. If you go back to 2003 for my time in CIFA, probably four
2 to five times for members. Typically budget briefings over the years
3 and then, with staffers, maybe 40 different occasions.

4 Q. Sir, when you say in reference to the four to five times to
5 members in reference to budget, is that within your field of
6 strategic planning for DoD CI and HUMINT?

7 A. Well, yes, it was always related to how were we going to
8 build -- it's under the context of a budget rollout. So it's what
9 our capability going to be next year and this is our we're going to
10 fund it. So it is future capabilities, yes.

11 Q. And, sir, were these briefings with members and staffers
12 based on your expertise in the field of DoD CI and HUMINT and
13 strategic planning?

14 A. Yes.

15 Q. Sir, you said in your current job you're the Deputy CFO?

16 A. Correct.

17 Q. Why is it that DIA selects Intel -- career Intel officers
18 as the Deputy CFO within the organization?

19 A. That's something that DIA does to make sure that the CFO
20 who doesn't have the expertise and the capabilities themselves
21 counterintelligence, human intelligence, analysis and production. So
22 the idea is to have a functional expert that sits with her in this
23 case to make sure that when people say if you cut that, ma'am, you're

1 going to break my program. I can throw the flag and say not
2 necessarily true from a mission perspective.

3 TC[MAJ FEIN]: Ma'am, the United States offers Mr. Kirchhofer as
4 an expert in strategic planning for DoD, CI, and HUMINT?

5 ADC[CPT TOOMAN]: We do object, Your Honor.

6 MJ: All right.

7 ADC[CPT TOOMAN]: Request the opportunity to voir dire?

8 MJ: Yes.

9 **INDIVIDUAL VIOR DIRE**

10 **Questions by the assistant defense counsel [CPT TOOMAN]:**

11 Q. Good afternoon, sir.

12 A. Good afternoon.

13 Q. Now, Mr. Kirchhofer, you didn't know that you were going to
14 be qualified as an expert until yesterday, correct?

15 A. Correct.

16 Q. That's when you sat down with the government, before you
17 sat down with us and they told you?

18 A. Yes.

19 Q. And they told you what your area of expertise was going to
20 be?

21 A. Yes. Well, they knew about my background and title was,
22 yes.

1 Q. But you didn't say to them, hey, I know a lot about
2 strategic planning for CI and HUMINT, correct?

3 A. As we -- I don't think I said that first. I think they
4 were asking me about my expertise and that was when it came out.

5 Q. Okay. But they let you know that they were going to
6 qualify you yesterday?

7 A. Yesterday, yes.

8 Q. Now, sir, if you're qualified as an expert, you're going to
9 offer a number of opinions and you told us about those opinions
10 yesterday. Those opinions are derived from your work on the IRTF,
11 correct?

12 A. Largely, yes. Yeah, primarily. Absolutely.

13 Q. And when you were working on the IRTF, you were pretty high
14 up in that program, just General Carr was above you. Is that
15 correct?

16 A. There was one other senior executive in the program or in
17 the leadership and that was Scott Laird, but, yes.

18 Q. And then you had a number of people underneath you?

19 A. That's correct.

20 Q. And those people would report things to you?

21 A. Correct.

22 Q. And you would take those reports at face value?

1 A. I checked their logic trail. I looked at it from the
2 perspective of how would a non-intelligence analyst review this. So
3 when we sent something to the Secretary of Defense, would it elicit
4 more questions? Did the logic seem sound, the argument that we were
5 making? That was the review that I did up.

6 Q. Sure. You wanted to make sure that it was packaged neatly
7 for the higher level people who were going to read it?

8 A. That it answered the mail. I don't know about packaged,
9 but, yes.

10 Q. When I say packaged, I mean they can understand it?

11 A. Correct.

12 Q. But you didn't look into, I guess, the specifics of what
13 was being reported?

14 A. If they made citations in the documentation, yes, then I
15 would look at that to make sure that we were appropriately developing
16 the argument that they were making in their assessments.

17 Q. Okay. And when you say citation, they may have cited some
18 sort of report that they created?

19 A. Right. Well, not just they created it. It could have
20 either been current intelligence reporting that we were using to
21 inform our understanding of the impact of the compromise or it could
22 have been one of the records that we WikiLeaks posted. So they were
23 citing lots of different items like that.

1 Q. Okay. And so some of that could have been just raw
2 intelligence?

3 A. Yes, absolutely.

4 Q. And if that was cited, you would have looked at it?

5 A. Correct.

6 Q. Now, I want to talk, I guess, about CI sort of generally.
7 Now, like the people on the ground were doing CI and they're
8 developing a relationship with some national, correct?

9 A. They can.

10 Q. Okay. That might be one thing they do?

11 A. Right.

12 Q. And as part of that relationship sometimes they're going to
13 tell that national the truth, right?

14 A. Yeah. I don't want to stray too far into classified.
15 There are particular activities that we do that deal with foreign
16 nationals and some of them are what we would call offensive
17 activities that might involve a witting or an unwitting foreign
18 national.

19 Q. Okay. Let's use an example where I'm a CI person, you're a
20 national. We've developed some sort of rapport, right?

21 A. Okay.

22 Q. And sometimes I tell you the truth when we're talking,
23 right?

1 A. Right.

2 Q. And sometimes I would lie to you too, right?

3 A. Again, sometimes it gets to either witting or unwitting.

4 Q. Part of counterintelligence can be telling someone else

5 something that's not true, correct?

6 A. I'm more comfortable talking about that in closed session -

7 ---

8 Q. Okay. Fair enough.

9 A. ---- in great detail.

10 Q. Sure. Sometimes when we're talking to foreign nationals

11 our CI folks, sometimes those foreign nationals lies to the CI folks?

12 A. Yes.

13 Q. Correct?

14 A. Correct.

15 Q. And so when you're looking at all of this stuff up at the

16 IRTF level, a lot of it based on this reporting done on the ground

17 where local national tells CI folk individual what could be a lie,

18 right?

19 A. Correct.

20 Q. And then that CI person reports it up, correct?

21 A. Correct.

22 Q. To their supervisor, right?

23 A. To the customer, right.

1 Q. Sure, and then that person may have reported it to the
2 IRTF, hey, this is what we're hearing about the reaction to all of
3 this, correct?

4 A. Right. I mean, it would have gone -- if it was happening
5 during the time of the IRTF, it would have been reported like any
6 other piece of intelligence and it would come back into a database
7 where we could access it.

8 Q. Okay. It would go through multiple levels, correct?

9 A. In some cases. It's not always the case. Some places it
10 will come right from the field home and other places to other
11 elements, you know, the Army, actually, they try to put more levels
12 of quality control in before they report, typically.

13 Q. Okay. But you personally, when you were looking at these
14 reports, didn't do anything to test the reliability of the
15 intelligence that was the basis?

16 A. That's the whole basis of analytic tradecraft is vetting
17 the information. So that was all done before that came up to me.

18 Q. Okay.

19 A. That's part and parcel of what an analyst does, try to
20 determine the voracity or validity of that raw intelligence that's
21 been collected.

22 Q. One moment, please.

23 A. Sure.

1 Q Now, you said that your opinions are mostly based on your
2 time in the IRTF and the reports that you would have looked at there
3 and those reports you took for face value, correct?

4 A. What does that mean, face value?

5 Q. You looked at it and you assumed that what was in there was
6 true?

7 A. I would questioned them if I felt their logic was wrong.
8 In general, I think they did a pretty good job, though, and it kind
9 of -- and I felt comfortable with it. But I did question, I did send
10 reports back. I felt that obligation because I was the first senior
11 executive in the chain of command for them.

12 ADC[CPT TOOMAN]: One second please, Your Honor.

13 **[There was a brief pause while the assistant defense counsel**
14 **consulted with co-counsel.]**

15 ADC[CPT TOOMAN]: Your Honor, we don't have any further voir
16 dire. We would object based under 702 on the reliability of the
17 underlying data. We would also make a relevance objection as to the
18 expertise. Mr. Kirchhofer said that this is pretty much based on his
19 time at the IRTF and so we don't think he would need to be qualified
20 as an expert to discuss that. We would also think that it would be
21 cumulative to what Mr. Carr, General Carr, retired, discussed.

1 MJ: Thank you. While we have this discussion, does the witness
2 need to depart the room? Does either side care if the witness
3 remains in the witness chair?

4 TC[MAJ FEIN]: The United States doesn't see an issue if he
5 stays, ma'am.

6 CDC[MR. COOMBS]: No, ma'am, that's fine.

7 MJ: All right. What's the government position? What are you
8 trying to elicit?

9 TC[MAJ FEIN]: Ma'am, ultimately, the United States is trying to
10 elicit a few items. One, specific findings that Mr. Kirchhofer
11 oversaw from IRTF about the damage to national security of the United
12 States. Second, the -- what was referenced before with General Carr,
13 the actual resourcing that went into creating the IRTF and how they
14 function internally. So we'd say it's not cumulative because General
15 Carr did not testify about that, plus, as General Carr testified, he
16 was not necessarily involved in the daily operations where Mr.
17 Kirchhofer was. As far as the actual expertise, Your Honor, the
18 reliability ----

19 MJ: Well, let me just -- The expertise that you want is
20 strategic planning for DoD counterintelligence and DoD HUMINT. How
21 does that relate to the IRTF?

22 TC[MAJ FEIN]: Yes, ma'am. I -- well, I can answer that, but I
23 probably would rather -- well ----

1 MJ: Well, if you want him qualified as a witness, you can
2 answer it now.

3 TC[MAJ FEIN]: I do, I do want to ask further questions. Yes,
4 ma'am.

5 **REDIRECT EXAMINATION**

6 **Questions by the trial counsel [MAJ FEIN]:**

7 Q. Mr. Kirchhofer, when you were selected to be the Deputy
8 Chief of the IRTF, where were you working at the time?

9 A. I was the Chief of Enterprise Strategies, so doing CI and
10 HUMINT enterprise strategic planning.

11 Q. And based off of that, when you were -- you were one of the
12 original leaders selected for the IRTF?

13 A. I was about 3 days in, 4 days in. Once they realized the
14 scope, they brought a second senior in. It was their whole intent.
15 My understanding at the time was because of my information security
16 background, my counterintelligence background and then the nexus
17 between strategic planning and dealing with foreign threats or future
18 threats and that was where they thought that this task force was
19 going to tee up information for how to deal with those future
20 threats.

21 Q. So, sir, you were hand-picked to do that job?

22 A. Yes, that's correct.

1 Q. And that's from your position as a Chief of the Enterprise
2 Management for CI HUMINT?

3 A. Correct.

4 Q. Sir, was the -- I'm sorry, what did you say?

5 A. Enterprise strategies.

6 Q. I'm sorry, thank you. Enterprise strategies. Sir, was the
7 WikiLeaks disclosures considered a counterintelligence issue or was
8 it some other type of issue?

9 A. In the early stages of an issue like that, you don't
10 necessarily know until you can get a clear foreign connection and
11 typically in a counterintelligence perspective, it's a connection to
12 a foreign intelligence service or an international terrorist
13 organization. So the question early on was where does WikiLeaks fall
14 that has the data. They're foreign, but are they a foreign
15 government? Are they journalists? Yes, what you would typically do
16 or what you would often see happen in the military department, CIA
17 investigators and criminal investigators would work together until
18 it's clear which way it should go and then that the informs the
19 authorities that they use for the remainder of their investigation.
20 Q. But that's not what happened in this case, correct?

21 A. Correct. We did not get involved at all in the
22 investigation. We steered clear of that so we wouldn't harm any of
23 the equities in it.

1 Q. You say investigating. You mean the criminal
2 investigation?

3 A. Correct.

4 Q. And, sir, what about -- where does insider threats come
5 into play as far as CI and HUMINT?

6 A. CI has a piece of insider threat, but there's also
7 information assurance that's a key partner, security is a key partner
8 in that and I think this is what the Army has really struggled with
9 in a post Fort Hood environment is all of these stovepipes looking at
10 the inside threat.

11 Q. And, sir, were you brought for that purpose as to ---

12 A. Bring in that counterintelligence awareness and knowledge,
13 yes, that's part of it and understanding where those lines of
14 authority go.

15 TC[MAJ FEIN]: Thank you, sir.

16 WIT: Sure.

17 TC[MAJ FEIN]: Your Honor, the United States will maintain that
18 based off Mr. Kirchhofer's selection as being the Deputy Chief, the
19 one who is essentially the XO of the organization who had mannet,
20 that he does have unique specialized knowledge in order to help the
21 trier of fact understand why certain decisions were made both in the
22 makeup and, ultimately, of the findings that were made by IRTF.
23 Specific findings, not all of them.

1 MJ: Yes?

2 ADC[CPT TOOMAN]: Ma'am, our -- the defense's position would
3 be that while Mr. Kirchhofer may have been selected because of his
4 background, that background doesn't really have anything to do with
5 his testimony. This sounds like sort of a resourcing argument which
6 we don't think would be proper under 1001(B)(4). It would be like
7 what CID does or what ----

8 MJ: Well, that's the issue on the table. Remember, what we
9 talked about earlier. I said I would allow the testimony in, listen
10 to both sides and then decide, after I heard it, whether it falls
11 within the line of cases that you're talking about. So for that
12 purpose -- I mean, I understand your objection. It's noted for the
13 record. It's going in the briefing tonight, but I'm going to hear,
14 in my interlocutory capacity at least, that testimony. Okay?

15 Now, why does this witness have to be an expert, though, is
16 where I'm a little confused. If you're talking about resourcing all
17 of the rest of that, isn't that more of a fact?

18 TC[MAJ FEIN]: Ma'am, the resourcing part, absolutely, is the
19 fact. It's the second part. It's his specialized knowledge and
20 experience on the findings, the intelligence findings on how national
21 security, their assessment, his assessment on how national security
22 was impacted by PFC Manning's actions. It's that, Your Honor, of
23 where his expertise is ultimately playing into this. I mean, all of

1 it feeds into each other because in order to make those assessments
2 there had to be an organization to do it. So I agree, Your Honor,
3 that simply saying how many people worked there and how long did they
4 work there and why, that's all just fact witness testimony which we
5 intend to elicit.

6 MJ: Yes?

7 ADC[CPT TOOMAN]: Ma'am, we would say that the opinions are
8 opinions you've already heard from General Carr, one. So it could be
9 cumulative. And, two, the defense position would be -- I understand
10 we'll brief it this evening, but our position would be the reason
11 that this individual is being qualified as an expert is so that he
12 talk about hearsay and serve as the case's -- talk about hearsay dump
13 truck pulled up by someone who is an expert so that they can testify
14 about an opinion that otherwise wouldn't be admissible. And our
15 position is this expertise doesn't have anything to do with the
16 opinion. So the purpose here is to get in otherwise inadmissible
17 testimony, Your Honor.

18 MJ: All right. The Court is going to be in recess for 15
19 minutes.

20 [The witness was temporarily excused, duly warned, and withdrew from
21 the courtroom.]

22 [The court-martial recessed at 1647, 31 July 2013.]

23 [The court-martial was called to order at 1707, 31 July 2013.]

1 MJ: The Court is called to order. Let the record reflect all
2 parties present when the Court last recessed are again present in
3 court.

4 The government has offered Mr. Kirchhofer as an expert in
5 the field of strategic planning for DoD counterintelligence and DoD
6 human intelligence. The defense objects to Mr. Kirchhofer's
7 expertise and that his expertise has nothing to do with his opinion
8 and his opinions are cumulative with Brigadier General Carr. The
9 Court has considered the defense's objections to Mr. Kirchhofer's
10 expertise and finds the government has established that Mr.
11 Kirchhofer is an expert in the field of strategic planning for DoD
12 counterintelligence and DoD human intelligence. He was specifically
13 selected to become Deputy of the IRTF because of that expertise.
14 With respect to his expertise, the Court finds he's properly
15 qualified as an expert by his knowledge of strategic planning
16 operations and budget in the fields of counterintelligence and human
17 intelligence. His opinion will help the trier of fact understand the
18 evidence and determine the facts at issue. Mr. Kirchhofer was Deputy
19 Chief of the IRTF and, as such, was directly involved in efforts to
20 mitigate any impact caused by the WikiLeaks disclosures of
21 information given to them by PFC Manning. His testimony is based on
22 sufficient facts and data. The IRTF is not a law enforcement agency.
23 Mr. Kirchhofer is qualified under M.R.E. 702 as an expert in the

1 field of strategic planning for DoD counterintelligence and DoD human
2 intelligence. The Court will allow the government to lay a
3 foundation for his opinion without eliciting any hearsay foundation
4 for that opinion. Should the witness offer opinions cumulative with
5 Brigadier General Retired Carr's opinion on direct examination, the
6 Court will stop the direct examination.

7 The defense motion opposing Mr. Kirchhofer's qualifications
8 as an expert under M.R.E. 702 is denied. Mr. Kirchhofer may testify
9 about resourcing the IRTF as a fact witness. If the Court determines
10 after reviewing the filings by the parties that the evidence is not
11 admissible aggravation evidence under R.C.M. 1001(B)(4) the Court
12 will disregard the testimony. Proceed.

13 **REDIRECT EXAMINATION**

14 **Questions by the trial counsel [MAJ FEIN]:**

15 Q. One moment, please. Sir, what were your responsibilities
16 as the Deputy Chief of the IRTF?

17 A. Really, it was the day-to-day management of the task force,
18 making sure that all of our folks were focused on the right
19 priorities, making sure that we were responsive to requests for
20 information coming from really everywhere, especially in the early
21 days, overseeing the work, the quality of work and really focused
22 primarily inward at the effort while the Chief focused out. That was
23 the difference between us.

1 Q. And how long did you have that role with the IRTF, sir?

2 A. From the 2nd of August until -- through May of 2010. So
3 August 2010 until May 2011.

4 Q. And earlier, sir, you testified that originally there were
5 three or four individuals that were originally selected to stand up
6 to the IRTF. How did you as the Deputy Chief then determine who else
7 was needed in order to establish the IRTF?

8 A. By that point, it was a Monday when I went and joined the
9 task force and the original team, the first four or five people had
10 spent the weekend identifying what they needed in terms of tools and
11 facilities and IT requirements, rough orders of magnitude for a
12 number of people. So then starting that Monday was when we were
13 reaching out across the department trying to get people brought in.
14 We were working internally to the DIA bureaucracy to get laptops. We
15 had a room with 75 computers all set up in a row so we could get all
16 of these analysts working together and collaborating. So all of that
17 was going on on Monday that was getting that going.

18 Q. And, sir, can you please explain -- well, before that, I'm
19 sorry, what criteria or what factors did you and you said Mr. Laird
20 before, the Chief ----

21 A. Correct.

22 Q. ---- did you consider in order to figure out how to man and
23 resource it?

1 A. Our initial focus was kind of going in three different
2 directions. So the first was people to help us manage data. Because
3 of the volume of data, none of us had the technical expertise to do
4 that. So what kind of tools could we use? What kind of servers did
5 we have? How could we get stuff moved from U.S. Central Command to
6 DIA Headquarters onto a JWICs environment, a Top Secret environment
7 as opposed to a Secret environment. So we needed technical expertise
8 in that way. Then we needed very traditional all source analysts
9 from the DIA Directorate of Analysis. These are folks who know how
10 to use every intelligence discipline to inform their analytical
11 effort. They've come with that tradecraft that's been taught to the
12 Director of National Intelligence standards. And the third big piece
13 for us was counterintelligence expertise, folks that, you know,
14 understand the foreign threat, how foreign governments or foreign
15 intelligence services might try to use the data or for terrorists
16 organizations. So that was our first thrust. It wasn't until we
17 started going into the data that we started realizing, okay, you
18 know, we might need expertise from the Joint Improvised Explosive
19 Device Defeat Organization, JIEDDO. So we were reaching out to them
20 and asking them for help. So it varied depending upon what we were
21 reviewing at any given time, but the first thrust was all source
22 analysis, counterintelligence, and technical expertise.

1 Q. Sir, when you talked about getting through the data, what
2 do you mean by that?

3 A. So we were trying to determine what exactly had gone public
4 on -- or what WikiLeaks had posted and comparing that to what we
5 thought was in U.S. Central Command holdings and then it was just
6 dealing with that volume. We pledged to read every word, to get to
7 the impact and that's where we needed to start on right away.

8 Q. Sir, can you please explain the task force op tempo during
9 the initial weeks of the IRTF standing up?

10 A. Sure. The initial 2 weeks were pretty painful. As people
11 were coming onboard, we were dealing with security clearances, and
12 getting access to the systems because they were coming in from
13 everywhere, not just DIA. We had folks from all over. So it was
14 really just trying to get them in the door, getting them up and going
15 and running. Probably by the middle of August was when we really hit
16 our stride. We were up to 125 personnel. We went to a 24-hour a
17 day, 7 day a week op tempo where we were just doing nothing but
18 reading, reading, reading all of these records.

19 Q. And for how long, sir, did the IRTF sustain this 24-hour a
20 day 7 days a week?

21 A. That went through September.

22 Q. Why was that, sir?

1 A. Because at that point we had felt confident -- we had
2 completed reviewing of the CIDNE Afghanistan data and we had finished
3 the CIDNE Iraq data at that point going into early October.

4 Q. One moment, please, sir. Sir, you mentioned for the
5 composition of the IRTF that there was internal DIA organizations.
6 You also mentioned CENTCOM. What other organizations were
7 represented that you all pulled into this task force?

8 A. So from within DoD, because we had a few folks from
9 external, but within DoD we had personnel from the Under Secretary of
10 Defense for Intelligence and that was where -- one of the places we
11 turned to for the technical expertise. They have an intelligence
12 system support office, I think it's called. And then the Under
13 Secretary of Defense for Policy provided personnel from OARDEC, the
14 Office for the Administrative Review of Detention of Enemy
15 Combatants. So they sent personnel. Each of the four military
16 services provided people. CENTCOM, U.S. Southern Command, U.S.
17 Special Operations Command sent people, the Defense Threat Production
18 Agency, the Defense Security Service. That was the primary elements
19 of -- from within the department.

20 Q. Sir, what do you mean -- excuse me. In regards to those --
21 at least within the DoD, what do you mean by "they sent people?"

22 A. They actually physically sent people to be a part of the --
23 integral to the task force, working on our op tempo, working in our

1 facilities. So when I say on the floor, that analytical floor where
2 we had the 75 terminals, they were integrated into that piece of it.
3 So some of those folks we partnered with who just would fly in or out
4 or just deal with us on a VTC-type capacity. But when I say on the
5 task force, they were literally there taking guidance from us day in
6 and day out.

7 Q. And why so many organizations within the Department of
8 Defense?

9 A. Because just the scope of the data, especially as we moved
10 on beyond the CIDNE data that we were concerned about it. Everyone
11 had equities in it.

12 Q. And what about organizations in general, sir, not naming --
13 just a brief description of organizations outside of DoD?

14 A. So we did have organizations that put people, again, on the
15 task force, on the floor, and that was the Drug Enforcement
16 Administration, the FBI sent eight analysts to support us and then --
17 I'm missing one. There was a third group. Oh, Department of State
18 sent a special agent from their diplomatic security element to sit
19 with us and he sat for the duration. So that was the external piece
20 on the floor and, of course, we had our partners that we were
21 communicating with daily, via intelligence community and even broader
22 VTCs.

1 Q. Sir, over the course of its total operation, about how many
2 people total were either assigned to IRTF or direct support of the
3 IRTF?

4 A. We tracked what was assigned. So within that cap of 125
5 that we were dealing with, we had about 300 people cycle on and off
6 the task force over the duration.

7 Q. Sir, why was it necessary -- earlier you talked about the
8 24-7 operation. Why was it necessary for the task force to work
9 around-the-clock to get through the data?

10 A. Our whole intent was to make sure that there was no
11 strategic surprise to the Secretary or other senior leaders in the
12 Department. So we felt like we had to rapidly catch up on what had
13 already been posted related to Afghanistan and then try to get ahead
14 of any potential release of the Iraqi data. So that was really
15 driving that non-stop 24 hours a day, nightshift/dayshift just to
16 crank through that data.

17 Q. Sir, you used the term strategic surprise. What do you
18 mean by that?

19 A. At the end of the day, it's about giving the Secretary
20 options to mitigate any potential impacts that were identifying for
21 him. So if he could do that before a public release, the idea was
22 that the impact would be much less on the back end.

23 Q. Was the IRTF focus at the strategic or tactical level?

1 A. Primarily at the strategic level. I don't know if you want
2 to call it dipping down to the tactical level as needed. So if we
3 identified a Soldier's personally identifiable information, we made
4 sure that the Army would be notified and let that person know that
5 their personnel information was out. So if you want to define that
6 as tactical, but for the most part we were looking at bigger impacts
7 particularly along the line of the seven category or focus areas that
8 the Secretary gave us.

9 Q. And are those, sir, the areas that were in the Secretary's
10 memo?

11 A. From 5 August, yes.

12 Q. Okay, sir. Sir, how did the IRTF internally conduct its
13 review?

14 A. So we -- using -- We first triaged the data. So we had it
15 in a database that we were able to run quick searches of alarming
16 things, you know, unclassified nicknames of things that we knew were
17 sensitive. So that was the very first thing we did and then we went
18 through the very -- the nugwork of having an analyst put eyes on
19 every record and then flagging anything that they assessed to have
20 some sort of impact or put up a flag for them and that went to a
21 second level more senior analytical review.

22 Q. So what did the IRTF have to do with the kind of findings
23 based off this review?

1 A. So our whole focus was on transparency and engagement
2 across the community and as it turned out the federal government. We
3 worked very closely with the National Counterintelligence Executive
4 and it was easier because we were in the same building as them who
5 helped us reach out across the federal government to other
6 departments and agencies. But our whole thing was identified and if
7 it's not a DoD equity but someone else's, to immediately reach out
8 and give them the opportunity to help themselves. That's how DEA for
9 example ended up sending people on to the task force floor.

10 Q. How were the conclusions of the IRTF at least on a daily or
11 weekly basis captured?

12 A. We either looked at things functionally, sometimes
13 regionally. We looked at it from a lot of different ways. So always
14 mindful of the seven categories the Secretary had given us. Then we
15 looked at special interest items. We were able to do that based on
16 the expertise on the task force. So we had DIAs preeminent -- I
17 don't know the right word -- star Iraqi analyst that came from our
18 Directorate of Analysis and he was able to point out some things to
19 do deep dive looks at in advance of them going public.

20 Q. And were there products produced from this?

21 A. There were. They did a number of small papers that came up
22 from the analytical floor. Again, they would go through that

1 analytical trade craft at that level and then it would come into the
2 front office where I would do a review.

3 Q. And did you review all of those individual reports, sir?

4 A. Yes, every one.

5 Q. And then what happened, sir -- at the conclusion of the
6 IRTF, what happened with all of those individual reports?

7 A. They were used to inform the development of a final report
8 that's over 100 pages in length. It wasn't just cut and paste. We
9 were trying to make sure that the early analysis that we had done for
10 example in August and September was still valid the following May
11 when we were putting that final report together. But it really was
12 integrating the analytical results of all of those earlier efforts
13 into a cohesive document.

14 Q. And who did the IRTF relay findings to?

15 A. Our final due out was the Director of DIA to the Secretary
16 of Defense, but that was shared. That final report was shared with
17 others because they were impacted.

18 Q. What was your role, sir, in the final report?

19 A. I did the final -- The senior executive review of it. We
20 built that actually out of the small staff that we had in the front
21 office of the IRTF so the analysts could keep working their bit. So
22 we took that on in the front office.

1 Q. Sir, why -- when you -- were your findings also relayed to
2 other members of the U.S. Government?

3 A. They touched on it. For the most part, we tried to really
4 limit -- our focus because it was really all the authority we had on
5 impacts of the Department. So primarily for us with other agencies,
6 it was highlighting to them, hey, did you see this, did you know that
7 this is in this dataset. We think you need to look at it. So it was
8 highlighting it and then pushing it off to them so they could do
9 something about it.

10 Q. And why push off the DoD findings to them, sir?

11 A. Not necessarily DoD findings. I mean, we shared them all.
12 They all -- The Department of State and our other intelligence
13 community partner saw everything we did before we published it so we
14 could benefit from their combined wisdom. It was really, what we
15 were pushing off was if we identify equities that go back to the DEA
16 example that we found, we couldn't necessarily be the organization to
17 say the impact to DEA. They needed to do that. So we just made sure
18 that they knew this is what's out there about you or that impacts
19 you, you know, you need to help yourself to try to figure out how to
20 mitigate that.

21 Q. Yes, sir. Now, sir, I'd like to focus your testimony on
22 some specific findings of the IRTF. Again, this is in an
23 unclassified session, so ----

1 MJ: Yes?

2 ADC[CPT TOOMAN]: Ma'am, I think we'll object right now. I
3 think the witness's testimony has made clear that the findings of the
4 IRTF were done by subject matter experts. They are the ones who did
5 -- who came to the conclusions. So if it was an IED issue, JIEDDO
6 made a conclusion, not Mr. Kirchhofer. So our position is that any
7 conclusion that Mr. Kirchhofer would testify about would be hearsay
8 that would be prohibited under 703.

9 MJ: Yes?

10 TC[MAJ FEIN]: Two major issues, ma'am. One, the conclusions
11 that Mr. Kirchhofer is relying on are conclusions that were made in
12 the course of the actual IRTF work product that he oversaw. He
13 signed off on every document, all these conclusions. Second, Your
14 Honor, Mr. Kirchhofer's testimony is based off of a IRTF's damage
15 assessment which has already been determined by the Court to not be
16 hearsay based off of defense's motion of judicial notice. So in
17 regards whether it's hearsay or not -- well, the Court has already
18 determined the damage testimony is not hearsay and it's -- but going
19 back to even if it's hearsay, Your Honor, this was relied upon by Mr.
20 Kirchhofer in his official capacity as the Deputy Chief. He had a
21 role in all of this himself. He even said that he didn't just sign
22 the document and send it off.

1 MJ: Did you make the opinions that you're testifying about
2 yourself?

3 WIT: All opinions were informed by what was coming in from where
4 the analytic expertise was. But it came out of the authority of the
5 IRTF. So I felt like I had to agree with either recommendations or
6 we would challenge them, if that makes sense.

7 MJ: I'm going to overrule the objection. Go ahead.

8 **Questions continued by the trial counsel [MAJ FEIN]:**

9 Q. Sir, during the review of this data ---

10 MJ: Yes? I've overruled the objection. If you want to make
11 further record, go ahead.

12 ADC[CPT TOOMAN]: Yes, ma'am. Our position would be that the
13 prejudice that would derive from this is we don't have the
14 opportunity to cross-examine the person who actually made -- formed
15 the opinion. And so while Mr. Kirchhofer may have ultimately said,
16 yeah, I agree or I don't agree, he's not in a position to be examined
17 on the actual specifics of what informed the decision. He can't do
18 that.

19 MJ: Overruled.

20 Q. Sir, during the review of data, did the IRTF actually
21 identify any areas of impact?

22 A. Yes, we did.

1 Q. And excuse me, sir, one moment, please. Sir, for the first
2 area I'd like you to -- this portion of your testimony be focused on
3 the SIGACTs from the CIDNE-A and CIDNE-I databases. Are you familiar
4 with those databases?

5 A. Yes, I am.

6 Q. What were some of the areas where IRTF identified impact or
7 potential impact for the CIDNE-A and CIDNE-I SIGACTs?

8 A. I think the first thing that we recognize and this actually
9 had been stretched through the entire IRTF experience was the
10 enhanced risk that cooperating foreign nationals would be having to
11 deal with because their names were not only associated in some way
12 with the U.S. military.

13 Q. And were there any others, sir?

14 A. Yes, there were some probably less long-term strategically.

15 MJ: Yes?

16 ADC[CPT TOOMAN]: Your Honor, we'll renew our cumulative
17 objection. This is all things -- These are all things that General
18 Carr has testified about.

19 MJ: Are you asking the same questions of this witness that you
20 asked with General Carr?

21 TC[MAJ FEIN]: No, ma'am. That's why these pauses. I'm making
22 sure, I do understand that, no ma'am, although that was the same

1 answer, Mr. Kirchhofer has his own unique information and it will be
2 narrowly tailored, Your Honor.

3 MJ: All right. If we start getting into the cumulative, I'm
4 going to pull up the prior opinion here just a moment.

5 TC[MAJ FEIN]: Yes, ma'am.

6 MJ: I'm going to overrule the objection for now, but keep it
7 focused on the things that the last witness didn't give opinions
8 about.

9 TC[MAJ FEIN]: Yes, ma'am.

10 **Questions continued by the trial counsel [MAJ FEIN]:**

11 Q. Sir, specifically with counter IED in reference to the
12 SIGACTs, what did the IRTF do with related reports that it discovered
13 within the compromised data?

14 A. So that -- The sheer volume was probably the first
15 challenge we had to deal, particularly when you looked at what was
16 coming out of the Iraqi dataset. So the way the Secretary had set up
17 the IRTF, he gave us the sole authority to talk to the impact or to
18 assess the impact of this compromise. So we did reach out to U.S.
19 Central Command. We worked with JIEDDO so that they could get hold
20 that specific data, cull through it all and then send their findings
21 back to us for final review.

22 Q. I'm sorry, Your Honor, one moment, please. Sir,
23 specifically now talking about NATO information that was contained

1 within the SIGACTs and your personal experience with that
2 information, that's this next area. At any point in the IRTF, did
3 you personally brief NATO partners ----

4 A. Yes.

5 Q. ---- about the loss of information?

6 A. Yes, I did.

7 Q. And what did you have to do in order to brief them?

8 A. I had to appreciate the impact to each of them that were
9 going to be present. I went to an annual counterintelligence counter
10 conference at SHAPE, Supreme Headquarters Allied Powers Europe. So
11 there were delegations from a number, not quite all of our NATO
12 partners. So I went in to try to explain to them what we thought the
13 impact was going to be both to them on our military to military
14 relationships with them and set the stage for what we knew was
15 coming. So it happened to be the same week that WikiLeaks started
16 posting records from Iraq. So I think I briefed them on a Tuesday
17 and later that week perhaps Friday is when that data started going
18 public.

19 Q. Sir, what level of individuals did you personally brief
20 when you traveled to the SHAPE Headquarters?

21 A. The majority were one star equivalence. I did some cases
22 of civilians much like the U.S. would bring but other cases, active
23 duty, one stars.

1 Q. And, sir, how would you describe their reaction when you
2 provided this information?

3 A. It varied.

4 MJ: Yes?

5 ADC[CPT TOOMAN]: We'll renew our hearsay objection.

6 MJ: Describing reactions overruled, but go ahead.

7 TC[MAJ FEIN]: Yes, ma'am.

8 Q. What was the reaction, sir, not necessarily what they,
9 overall, told you?

10 A. I'm trying to get the nuance of the question, sorry, the
11 difference. The response range, there were some unpleasant comments
12 directed at me and accusations at the U.S. and others patted me on
13 the back and said "we'll get through this." So it really did range
14 from pretty aggressive people getting chesty -- I don't know how else
15 to describe it -- in that open forum and in a closed forum I can tell
16 you what countries if that matters.

17 Q. Thank you, sir. Sir, now, in reference to lessons learned
18 in your involvement at the IRTF. In addition to the assessment
19 conducted by IRTF, are you aware of any lessons learned studies that
20 were conducted as a result of the compromise?

21 A. Yes, I am.

22 Q. And were you personally involved in conducting or
23 overseeing these lessons learned?

1 A. Some, but not all.

2 Q. And how were you involved, sir, or why would you have been
3 involved?

4 A. So one of the -- As we were building the IRTF originally
5 and I got assigned to it shortly thereafter, I actually brought a
6 chunk of my team along and that included my whole lessons learned
7 team partly because they do knowledge management well, just because
8 of how they operate and that's when we needed. But we decided then
9 to take advantage of having them on the staff to start doing lessons
10 learned studies internally on how the agency handles crisis and
11 contingency response. So they did a number of studies that looked at
12 how we reacted to this. That was our internal look. And then we
13 also worked with -- through the joint staff, J7, with what was then
14 the Joint Forces Command. They did a look for lessons learned on how
15 Central Command and the joint task forces in Afghanistan and Iraq
16 notified those cooperating foreign nationals. They did that review.
17 Then a third one that I didn't have any oversight of as they
18 developed it was JIEDDO related to their area of expertise.

19 Q. One moment, please, sir.

20 A. Sure.

21 Q. Sir, when the IRTF stood down, are there still members at
22 DIA who are -- that were members of the IRTF that are still tracking
23 the effects of these disclosures?

1 A. Tracking the effects and probably even the bigger chunk of
2 time is responding to requests from across the Department because ---
3 -

4 MJ: Yes?

5 CDC[MR. COOMBS]: Your Honor, could we have a very brief 802?

6 MJ: All right. 10-minute recess?

7 CDC[MR. COOMBS]: Yes, Your Honor.

8 **[The witness was duly warned, and withdrew from the courtroom.]**

9 MJ: Court is in recess until quarter of.

10 **[The court-martial recessed at 1736, 31 July 2013.]**

11 **[The court-martial was called to order at 1759, 31 July 2013.]**

12 MJ: The Court is called to order. All parties present when the
13 Court last recessed are again present in court. The witness is on
14 the witness stand. Major Fein?

15 **REDIRECT EXAMINATION (CONTINUED)**

16 **Questions by the trial counsel [MAJ FEIN]:**

17 Q. Sir, was there a financial cost associated with the
18 operations of IRTF?

19 A. Both direct and indirect, yes.

20 Q. And direct, sir, what was the financial cost?

21 A. The direct cost to the DIA portion specifically, that's the
22 only thing I would have visibility on, was \$6.2 million.

23 Q. And what did that include, sir?

1 A. That's correct.

2 Q. From your testimony, it seems like you started while you
3 were still in school?

4 A. I was, yes.

5 Q. You started as a typist?

6 A. I did.

7 Q. So fair to say you started sort at the lower level?

8 A. That's correct.

9 Q. You've done very well for yourself and now you're ----

10 A. Yes.

11 Q. I just need you to verbalize your responses.

12 A. Okay. I'm sorry.

13 Q. You may not want to toot your own horn.

14 A. It's just awkward.

15 Q. Okay. And now you're a senior executive?

16 A. That's correct.

17 Q. In that time, 22 years or so?

18 A. Yes.

19 Q. You've worked for the government the whole time?

20 A. That's correct.

21 Q. And in that time you've always dealt with classified
22 information or intelligence in some way?

23 A. Yes, I've always been within an intelligence organization.

1 Q. I want to talk briefly about -- you testified a little bit
2 about NATO and you talked about having some meetings with folks at
3 NATO, correct?

4 A. I went to a conference to brief what we believe the impact
5 would be either to our relationship with them or to capabilities, I
6 guess.

7 Q Okay. When was that, do you recall?

8 A. That was in October of 2010.

9 Q. Okay.

10 A. The week of the 18th. I don't remember what day I briefed
11 that week, but ----

12 Q. Okay. So October of 2010 you went and briefed some NATO
13 partners. Before that time, had you ever had interactions with NATO
14 partners?

15 A. At working levels, but I hadn't recently in my career.

16 Q. Okay. Following that briefing, did you have any
17 interactions with NATO partners?

18 A. Some follow-up actions related to that, but nothing else.

19 Q. Since you left the IRTF in 2011, have you had any
20 interactions with those NATO partners?

21 A. Not so much NATO. The five eyes, I would say. So a
22 different group of international partners. No, not NATO
23 specifically.

1 Q. Okay. So the folks that you gave a brief to and said, hey,
2 here's what we think might be coming, you haven't talked to those
3 people since?

4 A. Yes, for the Brits and -- for the Brits, yes, I have, but
5 not with the others. And that was more of a trying to give you an
6 accurate response, so it was more of a bilateral relationship as
7 opposed to a NATO engagement if that makes sense.

8 Q. Sure. When you spoke to them, did you speak about this?

9 A. No, it was about counterintelligence.

10 Q. So something -- about something else?

11 A. Correct.

12 Q. So after you gave them the briefing about this subject, you
13 didn't talk to them about this subject anymore?

14 A. Correct.

15 Q. Now, you spoke about those small papers, I think you called
16 them, that formed your opinion here today and the small papers, how
17 often would you get those?

18 A. Aperiodic, but routinely. They were coming in kind of
19 steadily the whole time.

20 Q. Starting from when you all set up the IRTF?

21 A. Probably after the first couple of weeks. I think
22 generally most of what we were doing in the first couple of weeks was
23 all based off of PowerPoint, just throw something down so we can get

1 the message across. We were trying to come up with a better way to
2 have an audit trail of our analytical efforts. So that's when we
3 decided we were just going to go with this information paper I think
4 is what we called them.

5 Q. So those information papers, can you give us an estimate of
6 how many of those you would say you received?

7 A. I would say at least 100, but I don't know how much more
8 than that. At least 100.

9 Q. Okay. And this in those small papers, you were getting
10 analysis from the people who were doing -- working for you?

11 A. That's correct. Analysis and some of them were related to
12 methodology and tradecraft.

13 Q. So methodology yes?

14 A. Yes.

15 Q. Tradecraft?

16 A. Yes.

17 Q. Some analysis?

18 A. Yes.

19 Q. And then ultimately conclusions as well?

20 A. Yes. Right, expected impact.

21 Q. Now, speaking generally about the IRTF, the IRTF was stood
22 up because Secretary Gates said so, correct?

23 A. Correct.

1 Q. And when he said so, he distributed a two-page memo?

2 A. Yes, two pages.

3 Q. And those -- In that memo he said tell me what the damage

4 is?

5 A. He said I want you to look at this. We did not use the

6 word damage. We were very careful. That's a statutory authority

7 within the national counterintelligence executive. We were just

8 trying to look at the impact on DoD and he gave us seven specific

9 focus areas to start.

10 Q. And you would say that memo from the Secretary of Defense

11 saying tell me what the effect is might compel folks to tell him that

12 there was an effect?

13 A. He didn't -- no. I don't know that's true. I don't think

14 we felt that. If there was no impact, we would have said it. I

15 think that's what you're getting at there.

16 Q. Now -- one moment, please.

17 A. Sure.

18 Q. Mr. Kirchhofer, you left the IRTF when you all finished,

19 correct?

20 A. Right, we were winding down into a small. At that point we

21 were calling it a WikiLeaks Damage Assessment Team.

22 Q. Okay. So that was sometime in the middle of 2011?

23 A. That was in May.

1 Q. May of 2011 you get your final report?

2 A. We had finished drafting it and then it kind of went into
3 quality control and final editing. At that point I left, yes.

4 Q. Okay. So then once you had that final report, you're not
5 getting updates anymore?

6 A. That's correct.

7 Q. So you're not receiving the short papers.

8 A. That's correct.

9 Q. And generally you're not involved in what is going on with
10 respect to this?

11 A. That's correct.

12 Q. And so your opinion is a snapshot?

13 A. Primarily, yes, that's a good way to put it. It's an
14 informed snapshot but, yes.

15 Q. And that snapshot was May of 2011?

16 A. Correct, that was when I stepped away.

17 ADC[CPT TOOMAN]: Thank you, sir.

18 MJ: Redirect?

19 TC[MAJ FEIN]: No, Your Honor.

20 MJ: All right. Is there a need to -- before I get there, let
21 me just put on the record we had an R.C.M. 802 conference between
22 trial counsel and the defense counsel, and the Court and we discussed
23 certain discovery issues. The counsel have conferred and based upon

1 the government not going down a certain line of questioning, the
2 defense no longer requires that discovery. Is that correct?

3 CDC[MR. COOMBS]: That is correct, Your Honor.

4 MJ: And the defense did ask for certain documents with respect
5 to this witness's testimony. Have those been available?

6 TC[MAJ FEIN]: I've asked for certain Bates numbers of what
7 we've produced, ma'am, and that's being created right now. The
8 documents have been found and we're trying to get the Bates numbers.
9 So we're going to do that. We would offer the United States that
10 before we move into a closed session, that we give that to the
11 defense and give them time to look at it and that way if they want
12 to ask additional questions they have the opportunity.

13 MJ: How long is it going to take you to get the documents to
14 the defense?

15 TC[MAJ FEIN]: Ma'am, we can do it concurrent with closing the
16 courtroom, the actual process of closing the courtroom. If we do
17 that, hopefully that will happen at the same time. So no more than
18 20 minutes.

19 CDC[MR. COOMBS]: Actually, Your Honor, I've looked at every
20 document that has a Bates number on it. So, based upon Major Fein's
21 proffer, if there's a Bates numbers on this that's been provided in
22 discovery, I'm confident, once I see, that will refresh my memory and
23 we won't have questions based upon that. So we can go into the

1 closed session and I'll just confirm that we got in Bates numbers.
2 I'm sure once I see it, I'll understand why I didn't ask certain
3 questions.

4 MJ: Why don't we do this then? The idea here is we're going to
5 go into a closed session and that's going to be it for the open
6 sessions today and then we're going to have an open session tomorrow
7 morning. Now, starting tomorrow morning, do the parties need
8 additional time in the morning to prepare for that?

9 CDC[MR. COOMBS]: Yes, Your Honor.

10 TC[MAJ FEIN]: Yes, ma'am. We could offer that Court start
11 tentatively at 1000 tomorrow morning and if the defense needs more
12 time then ----

13 MJ: Does that give you enough time or do you want to say
14 something like 11:00 o'clock just to be safe?

15 CDC[MR. COOMBS]: I think maybe 1100 to be safe would be good
16 because we have two witnesses so that would give us a little over an
17 hour for each witness.

18 MJ: Are they anticipated to be lengthy witnesses?

19 TC[MAJ FEIN]: Ma'am, based off the Court's guidance today, it
20 will be shorter. I have to talk to my co-counsel how much shorter we
21 can make that but it will be shorter. However, just to clarify, one
22 witness will be available beforehand, ma'am. The other witness

1 doesn't come until the afternoon. So we're probably going to extend
2 lunch to give the defense that opportunity for the second witness.

3 CDC[MR. COOMBS]: Then in that case 10:00 o'clock to start,
4 ma'am, would be fine.

5 MJ: You're sure?

6 CDC[MR. COOMBS]: Yes, ma'am.

7 MJ: All right. Then that's what we'll do. We'll just start at
8 10:00 o'clock. So for the gallery, we'll be starting at 10:00
9 o'clock tomorrow. We will be going into recess now into a brief
10 closed session involving classified information that the public is
11 not allowed to attend. I made the specific findings in that regard
12 in an appellant exhibit earlier. We'll start at 10:00 o'clock
13 tomorrow and we'll take an extended lunch so defense can have an
14 opportunity to prepare for the second witness that comes along. It
15 may be a late day tomorrow as well. We'll see. Is there anything
16 else we need to address before we end the public session?

17 TC[MAJ FEIN]: Ma'am, just your ruling was Appellant Exhibit 550
18 for Court closure.

19 MJ: Thank you.

20 CDC[MR. COOMBS]: Nothing from the defense, Your Honor.

21 MJ: Court is in recess until 10:00 o'clock tomorrow morning

1 with the exception of the closed section that we're going to be
2 doing.

3 [The court-martial recessed at 1810, 31 July 2013.]

4 [END OF PAGE]

Pages 11473 through 11487 of this transcript are classified “SECRET”. This session (31 July 2013, Session 1) is sealed for Reasons 2 and 3, Military Judge’s Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

Pursuant to AE 550, the unclassified and redacted version follows.

~~SECRET~~

1 [The court-martial was called to order at 1853, 31 July 2013.]

2 MJ: Court is called to order. Let the record reflect that all
3 parties present when the court last recessed are again present in
4 court. The witness is on the witness stand.

5 Major Fein, please describe who is in the gallery for the
6 closed session.

7 TC[MAJ FEIN]: Yes, ma'am. This session is classified at the
8 Secret level. Prior to it starting, the court security officer
9 completed his closed hearing checklist; it will be filed with the
10 post-trial allied documents. Also, in this--currently in this
11 session is the bailiff, the Court's paralegal, members of the
12 prosecution team, members of the defense team, and security, Your
13 Honor, and PFC Manning.

14 MJ: All right. Is there anything we need to address before we
15 proceed?

16 TC[MAJ FEIN]: No, ma'am.

17 CDC[MR.COOMBS]: No, ma'am. Well, actually, just to put on the
18 record--and this will probably come out when we have the redacted
19 portion of this as well--that the defense did verify the working
20 papers were, in fact, given to us in discovery--found exactly where
21 they were at thanks to the government giving us the Bates numbers,
22 then also found an email from me to my co-counsel discussing and

~~SECRET~~

~~SECRET~~

1 talking about these working papers. So, once the memory was jogged,
2 then I recalled looking at them, ma'am.

3 MJ: Mr. Coombs, thank you for notifying the Court. And I
4 assume we don't have to do this again in open court because of the
5 procedures we'll have where the--this will--I hope you redact---

6 TC[MAJ FEIN]: Yes, ma'am.

7 MJ: Okay. Go ahead.

8 **[Examination of Mr. Kirchofer continued.]**

9 **Questions by the trial counsel [MAJ FEIN]:**

10 Q. Sir, earlier, I was asking you questions about specific
11 data sets and some findings of impact. Now, I would like to focus
12 your attention on the Department of State cables.

13 A. Yes, sir.

14 Q. And, specifically, sir,

15

16 A.

17

18

19

20

21

22

~~SECRET~~

~~SECRET~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Q. And, sir, what was included--or how

A.

Q. And what was included, then, sir, in--when you're
referencing----

MJ: And those countries were?

WIT: There was--

~~SECRET~~

~~SECRET~~

1 MJ: Okay. Go ahead.

2 [Examination of the witness continued.]

3 Q. And, sir, what was--so,

4

5

6 A.

7

8

9

10 Q. And what are some specific examples of these collection
11 directives?

12 A. Like, for example,

13

14

15 Q. And why is it a concern, sir, that this information is now
16 available publicly?

17 A. To me,

18

19

20

21 Q. And, sir, did you, as the Deputy Chief at the IRTF, observe

22

23 A. The----

~~SECRET~~

~~SECRET~~

1 Q. ----the information within it?

2 A. Well, these are the types of things that--for example, when
3 I went--that particular didn't come up and shape--

4

5

6

7 ----

8 Q. What do you mean, sir, by " "?

9 A. Well, because

10

11

12

13

14 Q. And, sir, the level?

15 A. Yes, they are.

16 Q. And why is that?

17 A. Just for that reason,

18

19 Q. Sir, next, I'd like to----

20 MJ: Yes?

21 ADC[CPT TOOMAN]: Sorry, Major Fein. I guess, just for the
22 record, Your Honor, we would--I guess this would be part of our
23 objection--our hearsay objection. We believe that Mr. Kirchofer's

~~SECRET~~

~~SECRET~~

1 testimony, there, is based on hearsay.

2

3

4

5 MJ: All right. Do you have a hearsay exception?

6 TC[MAJ FEIN]: Well, a few, Your Honor. First off, this

7 information is based off of--first, it's not hearsay,

8

9

10 MJ: The witness has just testified about

11

12 TC[MAJ FEIN]: Yes, ma'am, but that's also based off the

13 information that the witness said--well----

14 MJ: That I said if it's hearsay, it's not allowed to be

15 elicited on direct, right?

16 TC[MAJ FEIN]: Yes, ma'am.

17 MJ: So?

18 TC[MAJ FEIN]: So I'll re-ask the question, ma'am.

19 MJ: All right.

20 TC[MAJ FEIN]: May I have a moment, Your Honor?

21 MJ: Uh-huh.

22 [Examination of the witness continued.]

~~SECRET~~

~~SECRET~~

1 Q. Sir, what--

2

3

4

5 A.

6

7

8

9

10

11 MJ: Who is "they" and "them"?

12 WIT: This example

13 MJ: Okay. Go ahead.

14 [Examination of the witness continued.]

15 A. So,

16

17

18

19

20

21

22 Q. Thank you, sir.

23 A. ----but I know that that was the conversation.

~~SECRET~~

~~SECRET~~

1 Q. Sir, now, could you please describe for the Court what

2

3 A. So, one of the compromised--or one of the records that went
4 public was

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22 Q. Was that information otherwise known, sir----

23 A. No.

~~SECRET~~

~~SECRET~~

1 Q. ----prior to the release of that cable?

2 A. No, it was not.

3 Q.

4

5 A.

6

7

8

9

10 Q.

11

12

13 A.

14 Q.

15 A.

16

17

18

19

20

21

22

23 Q.

~~SECRET~~

~~SECRET~~

1 A.

2

3

4

5 Q.

6

7 A.

8 Q.

9 A.

10

11

12

13

14 Q.

15

16 A.

17

18

19 Q.

20

21 A.

22

23

~~SECRET~~

~~SECRET~~

1 Q.

2

3 A.

4

5

6

7

8 Q.

9

10

11 A.

12

13

14 Q.

15 A.

16

17 TC[MAJ FEIN]: Thank you, sir. Your Honor, there's no further
18 questions.

19 MJ: Captain Tooman?

20 ADC[CPT TOOMAN]: Thank you, ma'am. One moment, please. Thank
21 you, sir, ma'am.

~~SECRET~~

~~SECRET~~

CROSS-EXAMINATION

Questions by the assistant defense counsel [CPT TOOMAN]:

Q. Sir, first, I want to talk, just generally, about cables. Are you--do you know what SIPDIS is?

A. Yes.

Q. So you understand that it's the type of cable that's widely distributed and disseminated throughout the government?

A. Yes.

Q. Do you have any idea how many folks have access to SIPDIS?

A. Well, at the time when NCD was still turned on, it was broadly available on SIPRNET, so I don't know how many people that is, but it's significant.

Q.

A.

but----

Q.

A.

Q.

A.

Q.

~~SECRET~~

~~SECRET~~

1 A.

2

3 Q. Now, you talked about

4

5 A. Yes.

6 Q.

7

8

9 A.

10

11 Q. Are you aware of that--if--are you aware of whether or not

12

13 A. I don't know, I'm not----

14 Q. So you've never gotten any report that

15

16

17 A. I have not, no.

18 Q. Okay. Now, you mentioned an example, there,

19

20

21 A. Yes, exactly.

22 Q. Are you aware of whether or not

23

~~SECRET~~

~~SECRET~~

1 A. That's--I think--if

2

3

4 Q. Okay. So, you're not aware

5

6 A. Correct, I don't know that.

7 Q. Okay.

8 A. I know that

9

10 through on a threat.

11 Q. Okay. Is it fair to say that

12

13 A. No, no, the

14

15

16

17

18

19 Q. Okay. And do you know if that

20

21 A. I said if that happened, it was after I left; I don't know.

22 ADC[CPT TOOMAN]: One moment, please. Nothing further. Thank

23 you, sir.

~~SECRET~~

~~SECRET~~

1 MJ: All right. Redirect?

2 TC[MAJ FEIN]: May I have a moment, Your Honor.

3 MJ: Yes.

4 TC[MAJ FEIN]: No, Your Honor, no further questions.

5 MJ: All right. Is there anything else we need to address today
6 before we close the session for good--or recess the session? Excuse
7 me.

8 TC[MAJ FEIN]: No, ma'am.

9 CDC[MR.COOMBS]: No, Your Honor.

10 MJ: All right. And we said 10 o'clock tomorrow, right?

11 ADC[CPT TOOMAN]: Yes, Your Honor.

12 MJ: All right. Court is in recess, then, until 10 o'clock
13 tomorrow.

14 [The court-martial recessed at 1910, 31 July 2013.]

15 [The court-martial was called to order at 1911, 31 July 2013.]

16 MJ: Well, it's called--court is called to order, briefly, just
17 to temporarily excuse you.

18 [The witness was duly warned, temporarily excused, and withdrew from
19 the courtroom.]

20 MJ: Court is in recess.

21 [The court-martial recessed at 1911, 31 July 2013.]

~~SECRET~~

1 [The court-martial was called to order at 1002, when 1 August 2013.]

2 MJ: Court is called to order. Major Fein, please account for
3 the parties.

4 TC[MAJ FEIN]: Yes, ma'am. All parties, when the court last
5 recessed, are again present including--Captain Overgaard is present.

6 Also, Your Honor, this session is unclassified. Yesterday,
7 at the close of the session, the security--the court security officer
8 completed his checklist for opening the session and that will be
9 filed with the post-trial allied papers.

10 Also, Your Honor, as of 9:55 this morning, there are 10
11 members of the media at the Media Operations Center, 1 stenographer,
12 no media in the courtroom, 8 spectators in the courtroom, and,
13 although there are no spectators in the overflow trailer, it is
14 available all day.

15 MJ: All right. And, for the record, we've had one additional
16 filing by the defense last night. As we discussed yesterday--well,
17 not like--it was created last night, filed this morning--a motion for
18 appropriate relief under R.C.M. 1001(b)(4) and that's at Appellate
19 Exhibit 629. And I note, for the record, that the defense is
20 basically objecting to some of the testimony of yesterday's witnesses
21 in three categories: chain of events testimony, could cause damage
22 testimony, and monetary expense and use of resources testimony. Now,

1 the government will be filing a response tonight, is that correct,
2 Major Fein?

3 TC[MAJ FEIN]: Yes, ma'am.

4 MJ: All right. Now, the parties and I discussed this issue
5 this morning in an R.C.M. 802 conference, briefly. Once again,
6 that's a conference where I discuss scheduling and other issues--
7 logistics and other issues that are going to arise in cases--and what
8 we agreed to do is--some of this testimony may come out with today's
9 witnesses as well and tomorrow's, for that matter. And what we're
10 going to do is the defense will have a standing objection to these
11 three categories of testimony. If you want to stand up and say, "We
12 think that this is that category," go ahead and do that. We're going
13 to take the testimony--this is a judge alone trial; I can disregard
14 testimony I find to be inadmissible when I rule on the motion. And,
15 rather than disrupt the trial schedule, the parties have agreed to
16 proceed with that in mind.

17 Is that correct?

18 TC[MAJ FEIN]: Yes, ma'am.

19 CDC[MR.COOMBS]: Yes, Your Honor.

20 MJ: Would either side desire to add anything to what we
21 discussed in the 802 conference?

22 TC[MAJ FEIN]: No, ma'am.

23 CDC[MR.COOMBS]: No, Your Honor.

1 MJ: Okay. So the Court anticipates ruling on this motion as
2 well as the defense motions for--to merge specifications for
3 unreasonable multiplication of charges for findings and sentence
4 early next week as well as issue special findings.

5 Is there anything else we need to address before we
6 proceed?

7 TC[MAJ FEIN]: No, ma'am.

8 CDC[MR.COOMBS]: No, Your Honor.

9 MJ: Please call your first witness.

10 ATC[CPT OVERGAARD]: The United States calls Ms. Elizabeth
11 Dibble.

12 **ELIZABETH DIBBLE, civilian, was called as a witness by the**
13 **prosecution, was sworn, and testified as follows:**

14 **DIRECT EXAMINATION**

15 **Questions by the assistant trial counsel [CPT OVERGAARD]:**

16 Q. And you are Ms. Elizabeth Dibble from the Department of
17 State in Washington, DC?

18 A. Yes, I am.

19 Q. And what is your current position at the Department of
20 State?

21 A. I recently concluded an assignment as Principle Deputy
22 Assistant Secretary in the Bureau of Near Eastern Affairs and I am

1 transitioning--next week, I will arrive in London where I will be the
2 Deputy Chief of Mission at the embassy, there.

3 Q. And you're here, today, to discuss your opinions, based on
4 your expertise in diplomatic priorities and operations in Near
5 Eastern Affairs?

6 A. Yes, I am.

7 Q. And to specifically give your opinion on the impact of PFC
8 Manning's ----

9 MJ: Hold on just a minute. Expertise in diplomatic priorities
10 and ----

11 ATC[CPT OVERGAARD]: And operations in Near Eastern Affairs.

12 MJ: Yes.

13 MJ: All right.

14 [Examination of the witness continued.]

15 Q. And, specifically, to give your opinion on the impact of
16 PFC Manning's criminal conduct on the Department of State as it
17 relates to the near east and, specifically, in regards to Iran,
18 Lebanon, and Libya?

19 A. Yes.

20 Q. And how does Near Eastern Affairs fit into the Department
21 of State?

22 A. The Bureau of near Eastern Affairs is one of six geographic
23 bureaus. It spans the countries from Morocco going eastward through

1 Iran, so including Algeria, Morocco, Tunisia, Libya, Egypt, the gulf
2 states, the Levant, Syria, Lebanon, Jordan, and then Israel,
3 Palestinians, Iraq, and Iran.

4 Q. So, basically, the Middle East and Northern Africa?

5 A. And North Africa, correct.

6 Q. And what is the role of a geographic bureau in the
7 Department of States?

8 A. A geographic bureau is responsible for policy development
9 and implementation with regard to U.S. policy toward that specific
10 region of the world. In Washington, we are the interface with our
11 missions overseas, our embassies and consulates in all of the
12 countries I mentioned. We participate in the interagency policy
13 process. We report up through the Undersecretary for Political
14 Affairs to the Secretary of State.

15 Q. And what is the mission of the Bureau of Near Eastern
16 Affairs?

17 A. The mission of the bureau is to manage U.S. bilateral
18 diplomatic relations with the countries of the near east.

19 Q. And you mentioned that you were Principle--or you're just
20 transitioning out of the Principle Deputy Assistant Secretary
21 position at the Bureau of Near Eastern Affairs. What does it mean to
22 be the Principle Deputy Assistant Secretary?

1 A. Each geographic bureau is headed by an Assistant Secretary
2 which is a Senate-confirmed position. As the Principle Deputy
3 Assistant Secretary, I was the number two in the bureau reporting
4 directly to the Assistant Secretary. There were also seven Deputy
5 Assistant Secretaries who covered both specific regional and
6 functional issues with regard to the near east.

7 Q. And how long were you PDAS for the Bureau of Near Eastern
8 Affairs?

9 A. Just under 2 years.

10 Q. Now, going back to the beginning of your career with the
11 Department of State--when did you join Department of State?

12 A. September 1980.

13 Q. And in what capacity were you hired?

14 A. I'm a career foreign service officer--a commissioned
15 foreign service officer. I was hired as an entry level officer and
16 have--this is my career; this is, basically, all I've ever done. I
17 have worked my way up through the ranks and it will be 33 years in
18 September.

19 Q. And what does it mean to be--you said it's like a
20 commissioned officer. What--could you give us a little more detail
21 on what it means to be a foreign service officer?

22 A. Foreign service is--the process for entry into the foreign
23 service is a competitive one. There is a written exam and then an

1 oral assessment and we staff all of our embassies overseas--we also
2 work in the Department of State in Washington. Much like the
3 military, we rotate every couple of years. Our tours are anywhere
4 from 1 to 3 years, depending on the assignment.

5 We are hired as generalists with a specific functional
6 specialization; I am actually an economic officer. We have political
7 officers, administrative officers, public diplomacy officers,
8 consular officers, and economic officers. Over time, we, generally,
9 though, develop a regional--an area of concentration--a regional
10 expertise based on repeat assignments in a specific region.

11 Q. And you said you've worked your way up through your 33
12 years. It's--what would your position be, now, as far as working
13 your way up?

14 A. I am a Foreign Service Officer Class Minister/Counselor
15 which is the equivalent of a two-star in the military system.

16 Q. And what was your first assignment at the Department of
17 State?

18 A. My very first assignment was in the Office for Combatting
19 Terrorism. I don't know, do you want me to go through my CV? I can
20 do that, if you'd like, but----

21 ADC[MAJ HURLEY]: Ma'am, the defense would not object to Ms.
22 Dibble being accepted as an expert by this court with respect to the
23 Bureau of--with respect to her expertise in near eastern affairs, but

1 we would object to diplomatic priorities unless, somehow, that's been
2 specified.

3 MJ: All right. Is there a written CV that you have?

4 ATC[CPT OVERGAARD]: A--well, a general written CV--or a
5 general, written bio, ma'am; it doesn't go through all the details of
6 what the positions entail, when she was at the specific----

7 MJ: Do we need to do that if they're----

8 ATC[CPT OVERGAARD]: ----Near East Bureaus.

9 MJ: ----the defense is willing to stipulate to her expertise?

10 ATC[CPT OVERGAARD]: One moment, ma'am.

11 MJ: With the exception of the diplomatic priorities? If you
12 want to go a little further into that, go ahead, but I don't think we
13 need all of the biographical data from this--if you want to put it in
14 writing as a prosecution exhibit, go ahead.

15 ATC[CPT OVERGAARD]: Yes, ma'am.

16 ADC[MAJ HURLEY]: And we would have no objection to that, ma'am.

17 ATC[CPT OVERGAARD]: One moment, please.

18 MJ: If the questions are foundational to the opinion----

19 ATC[CPT OVERGAARD]: Well, that's----

20 MJ: ----you're trying to elicit, that's fine, but I just don't
21 want to spend a great deal of time going from everything----

22 ATC[CPT OVERGAARD]: And that's the problem, ma'am. Her--going
23 through her career and all her experience in near eastern affairs is

1 what establishes her expertise in the diplomatic priorities and
2 operations of near east Asia, so--or near eastern affairs.

3 MJ: Well, if she's an expert in near eastern affairs, she can
4 give her opinion on----

5 ATC[CPT OVERGAARD]: She should be able to give her opinion on
6 diplomatic priorities which is the defense's objection.

7 ADC[MAJ HURLEY]: If I'm going to respond to that, first, ma'am,
8 we would just consider that to be overbroad. I mean, she's an expert
9 on near eastern affairs, but this--the topic she would be opining on,
10 from the perspective of the defense, is overbroad.

11 MJ: Well, then I'm going to let the government develop their
12 foundation. Go ahead.

13 [Examination of the witness continued.]

14 Q. And, again, ma'am, what was your--we are going to go
15 through your CV. So what was your first assignment at the Department
16 of State?

17 A. I was in the Office for Combating Terrorism. And----

18 Q. And when was that?

19 A. 1980 to 1982.

20 Q. And what did you do in that position?

21 A. I was what's called an International Relations Officer
22 General with--and I had responsibility for formulation of our CT
23 policy which--CT was a much smaller office than it is now.

1 Q. What is "CT"?

2 A. Oh, sorry, Counter Terrorism. I speak in acronym-use, just
3 let me know if I'm---

4 Q. We do too. And what was your assignment after that?

5 A. I as assigned to the U.S. Embassy in London where I was--I
6 spent a year as a counselor officer and then I was the Staff
7 Assistant to the Ambassador and that assignment was 1982 to 1984.

8 Q. And then after that?

9 A. 1984 to 1985, I was in training in Washington in economics
10 and I had a mid-level management course.

11 Q. And then what was your next assignment?

12 A. 1985 to 1986, I was in the Bureau of Economic Affairs in
13 the Trade Office. And then I was succuded from the State Department
14 to the Office of the U.S. Trade Representative from 1986 to 1988
15 where I was the Assistant Chief Textile Negotiator.

16 Q. And then where were you assigned in 1988?

17 A. Following 6 months of French training, I was assigned to
18 the U.S. Embassy in Tunisia in 1989; I was there until 1992. I was
19 in the Economics Section there.

20 Q. And what is it--what did you actually do when you were
21 assigned there?

22 A. I was the Commercial Attaché responsible for fostering U.S.
23 economic and commercial relations with Tunisia.

1 Q. And is--was that under the Bureau of----

2 A. Yes, that----

3 Q. ----Near Eastern Affairs?

4 A. ----is in the Bureau of Near Eastern Affairs.

5 Q. And what was your next position the Department of State?

6 A. I was at the U.S. Embassy in Islamabad, Pakistan from 1992

7 to 1994. At that time, Islamabad fell under the Bureau of Near

8 Eastern Affairs; we've been reorganized since then. And I was also

9 in the Economic Section focusing on finance and development issues.

10 Q. And what did you do--I mean, what was your day-to-day

11 activity focusing on the finance operations?

12 A. Pakistan----

13 ADC[MAJ HURLEY]: Ma'am--I'm sorry to interrupt, Ms. Dibble.

14 We'll just stipulate to the expertise of this particular witness in

15 its totality.

16 MJ: All right. Thank you. Proceed.

17 Q. Ms. Dibble, are you familiar with the information released

18 by WikiLeaks?

19 A. Yes, I am.

20 Q. And how are you familiar with these unauthorized

21 disclosures?

22 A. I was in the--at the time--the Bureau of European Affairs

23 when the first tranche of cables were--or purported cables were

1 released and then I have been serving in Washington since then and
2 was aware that there were additional releases that came this--started
3 in the fall of 2010--November, I believe. And then I was aware of
4 additional releases through the summer of 2011.

5 ATC[CPT OVERGAARD]: If defense has voir dire, now would be the
6 appropriate time.

7 ADC[MAJ HURLEY]: Ma'am, we don't have----

8 MJ: They've stipulated to the expertise.

9 ATC[CPT OVERGAARD]: Okay.

10 [Examination of the witness continued.]

11 Q. And could you describe for the court the reaction at your
12 office when you learned of the WikiLeaks releases?

13 ADC[MAJ HURLEY]: Objection, hearsay and relevance.

14 MJ: Overruled. It's her reaction. Go ahead.

15 Q. Without going into what anyone said at your office, what
16 was----

17 A. General----

18 Q. ----the general reaction?

19 A. ----I mean, horror and disbelief that our diplomatic
20 communications had been released and were available on public
21 websites for the world to see.

22 Q. And why did you have that reaction?

1 A. Because, when--the role of an embassy overseas is to be the
2 eyes and ears of the U.S. on the ground and to report events in a
3 country, but not just the facts because people can--you know, if you
4 read the newspapers, you can get the facts, but the back-story, the
5 context to delve behind a policy decision, for example--why a
6 decision was made. And to elicit from our contacts overseas the
7 color of the context that goes with the facts.

8 ADC[MAJ HURLEY]: I'm sorry, Ms. Dibble----

9 MJ: Yes?

10 ADC[MAJ HURLEY]: Ma'am, may we have a brief 802?

11 MJ: Yes.

12 ADC[MAJ HURLEY]: 10 minutes, ma'am.

13 [The witness was duly warned for the recess and remained on the
14 stand.]

15 **[The court-martial recessed at 1020, 1 August 2013.]**

16 **[The court-martial was called to order at 1030, 1 August 2013.]**

17 MJ: Court is called to order. Let the record reflect all
18 parties present when the court last recessed are again present in
19 court. The witness is on the witness stand. Please proceed.

20 **[Ms. Dibble was reminded of her previous oath and examination**
21 **continued.]**

22 Q. Do you have any experience preparing cables in near eastern
23 affairs?

1 A. Yes, I do, from my overseas assignments.

2 Q. And do you have any experience reviewing cables?

3 A. Yes, I do. As a supervisor of a section and as a Deputy
4 Chief of Mission, cables would--prepared by other would come to me
5 for review and clearance and then being--then I would sign them out,
6 as we say.

7 Q. And why are cables important to, specifically, near eastern
8 affairs?

9 A. Because our embassies provide the eyes and ears on the
10 ground for the U.S. Government, they provide the assessment of our
11 embassies of this specific situation on the ground of a specific
12 issue or, you know, a broad--cables can be everything from a very
13 short, narrow subject--your reporting of a meeting, a reporting of an
14 event, to a broader analysis of the current situation in Country X.
15 And cables not only provide the facts, but they provide the analysis,
16 the synthesis and the embassy's judgment of what is going on in a
17 particular country.

18 Q. And who relies on the information in these cables?

19 A. Cables are meant for a very broad audience, not just the
20 Department of State in Washington. The Department of States--our
21 sister embassies--for instance, if Cairo sends in a cable reporting
22 on the political situation there, it's of interest to other embassies
23 in the near east. It's of interest to our embassies in Europe who

1 are talking with our European allies on the situation in Egypt. But,
2 perhaps, the broadest audience is back in Washington. It's the broad
3 policy community, the interagency community, various agencies of the
4 U.S. Government, the intelligence community, it's not just--the
5 cables are not just meant for the Department of State.

6 Q. And do you know what the intelligence community and other
7 organizations use the cables for?

8 A. Our cables factor into their analysis. I don't want to go
9 into anything in this session. I can--I'm happy to do that in
10 another classified setting, but, sufficed to say, the information we
11 provide is fed into a variety of products that are produced around
12 the government.

13 ATC[CPT OVERGAARD]: At this time, ma'am, we'd like to move into
14 a closed session.

15 MJ: All right. Well, we're going to do the defense open cross-
16 examination first.

17 ADC[MAJ HURLEY]: Yes, ma'am.

18 **CROSS-EXAMINATION**

19 **Questions by the assistant defense counsel [MAJ HURLEY]:**

20 Q. Good morning, Ms. Dibble.

21 A. Good morning.

22 Q. You're a United States Government employee?

23 A. Yes, I am.

1 Q. And have been for many years?

2 A. Yes.

3 Q. 30, by my count, as I was sitting, when you told Captain
4 Overgaard your experience?

5 A. Almost 33, actually.

6 Q. And in that time, you've dealt with classified information?

7 A. Yes, I have.

8 Q. You've drafted classified documents?

9 A. Yes, I have.

10 Q. You reviewed classified documents?

11 A. Yes, I have.

12 Q. Ever served as an Original Classification Authority?

13 A. Yes, I have.

14 Q. In the time that you have performed all of those functions-
15 -and so--let me restate my question. I apologize for this being so
16 garbled, still. You're familiar with the executive orders regarding
17 classified information?

18 A. Yes, I am.

19 Q. Have you ever questioned those executive orders to say,
20 "You know, I just don't think our classification structure is right"?

21 A. No, I have not.

1 Q. And so, if you have never questioned it at all, you've
2 certainly never publicly questioned the classification structures in
3 the executive----

4 A. No, I have not.

5 Q. ----branch? In making the conclusions and judgments that
6 you made with respect to this case--now, we're not going to talk
7 about those conclusions and judgments right now--did you ever
8 evaluate the information you received to--and determined whether or
9 not it was properly classified?

10 A. I'm not sure I understand the question.

11 Q. So you were given data and information and that data and
12 information informed your opinion?

13 A. Correct.

14 Q. Did you ever evaluate that data and information to
15 determine if it was properly classified?

16 A. No, I did not.

17 Q. You just accepted the classification on face value?

18 A. Yes, I did.

19 Q. And you accepted the information that you were told at face
20 value?

21 A. What information are you referring to, specifically?

22 Q. Not any specific information. I don't want to drill down
23 on any specific----

1 A. Uh-huh.

2 Q. ----fact for fear of discussing classified information----

3 A. Uh-huh.

4 Q. ----that we shouldn't. Ma'am, the question is: all the

5 facts and data that you relied on, did you question--did you ever

6 question the veracity of the facts and data that you received, or did

7 you just accept it at face value?

8 A. I think the way I'd answer that is many cables and reports

9 are snapshots of a situation in time.

10 Q. Uh-huh.

11 A. And it is--when an embassy sends in a cable, it's their

12 best judgment at that time. Do situations change? Absolutely. But

13 I cannot think of an instance where I looked at a cable and thought,

14 "They've got this dead wrong," no.

15 Q. And, ma'am, since we started talking about cables, I want

16 to talk about, first, the content of the cables and then my next line

17 of questioning will be how those cables are distributed, okay?

18 A. Uh-huh.

19 Q. Okay. So, as you were talking with Captain Overgaard, you

20 described the general formats of different types of cables. And one

21 you just described, here, on cross, which was the snapshot in time,

22 correct?

23 A. Uh-huh.

1 Q. And that snapshot is a snapshot of a particular meeting or
2 a particular thing that occurred in the recent past?

3 A. It can be a snapshot of a meeting, a snapshot of a
4 government policy decision, it can be many things--you know,
5 reporting on a public affairs program that an embassy did, yes.

6 Q. And each cable will have an analytic component?

7 A. No, not necessarily.

8 Q. Some cables will just be a recitation of the facts that the
9 drafting officer and, ultimately, the embassy, itself, believes is
10 important for some other organization?

11 A. Well, it depends on the content of the cable. I mean, we
12 have cables that go in with fiscal data for a, you know, Secretary of
13 State's travel; that would not have an analytical component.

14 Q. Yes, ma'am.

15 A. In general, however, a reporting cable on the political
16 situation or the economic situation in Country X might very well have
17 an analytical component or what we would call a "comment."
18 Sometimes, you see that comment.

19 Q. And then there's that--we'll just call them the "snapshot
20 cable"--I'm sure that's a non-doctrinal term--there's a snapshot
21 cable and then there are other cables like scene-setter cables,
22 right?

23 A. Correct.

1 Q. Could you describe, briefly, what a scene-setter cable
2 would consist of?

3 A. A scene-setter cable is often done when there is a high
4 level U.S. Government visitor coming to a country; a presidential
5 visit, Secretary of State is coming to visit--and it is a piece that
6 sets out the lay of the land, the environment, the current situation
7 so that the high level visitor and his or her party basically know
8 what they're--what they can expect to find on the ground. Is the
9 government about to reshuffle itself? Are elections being called?
10 That type of thing. And it often contains an analytical--you know,
11 the embassy's judgment--an analytical component to it.

12 Q. Now, with respect to those sorts of cables--whether it's a
13 snapshot-type cable or a scene-setter-type cable or any, to use your
14 expression, "reporting cable"--they are distributed according to the
15 drafter of the cable, correct?

16 A. Yeah, the originator of the cable, yes.

17 Q. And one such distribution could be SIPDIS?

18 A. Yes.

19 Q. And SIPDIS is SIPRNET Distribution?

20 A. Correct.

21 Q. So that when the NCD--the Net Centric Diplomacy database
22 was up, if it was marked for SIPDIS, then it would be placed in the
23 Net Centric Diplomacy database?

1 A. Correct, that's my understanding. I'm not--I have to say
2 I'm not a tech--dual expert on those things.

3 Q. Right. But that's your understanding?

4 A. Yes.

5 Q. And there are other forms of distribution?

6 A. There are captions and other things, yes; that go--that can
7 go in a cable.

8 Q. And I don't want--I know there are a lot of captions and--
9 but I guess what I want to talk about right now, ma'am, are the other
10 ways that a cable can be distributed. Another way is State
11 Distribution--is it STATEDIS or STADIS?

12 A. STADIS?

13 Q. And that distribution is just distribution internal to the
14 Department of Defense?

15 A. Department of State.

16 Q. I'm sorry, Department of State.

17 A. Yes, and we have things like personnel channels, medical
18 channels, you know, where, because of the content of the cable, the
19 distribution is limited.

20 Q. And there are other--even beyond STADIS, there are other
21 more restrictive distributions possible?

22 A. Yes.

23 Q. An example of that would be NODIS?

1 A. NODIS, LIMDIS----

2 Q. EXDIS? And, ma'am, sometimes my questions----

3 A. Or each of those.

4 Q. Ma'am, what's NODIS?

5 A. It stands for "No Distribution."

6 Q. And EXDIS?

7 A. And it's--I think it's "Executive Distribution." Again, I

8 think I'd have to defer to our IT and, you know, IRM experts on this.

9 Q. Sure. Ma'am, this is just to the best of your knowledge.

10 A. Yeah.

11 Q. Thank you. Ma'am, sometimes my questions will sound like

12 questions and sometimes they'll sound like statements, but whether

13 they sound like a question or statement, you still have to respond

14 verbally to what I say just--it's for the record for the court

15 reporter.

16 A. Sure.

17 Q. Thank you.

18 Now, your opinion, ma'am, it's going to be limited to the

19 impact to the United States Government?

20 A. Correct.

21 Q. Not impact to any foreign governments?

22 A. Well, the impact on the United States Government--foreign

23 reaction----

1 Q. Is an impact to the---

2 A. ----is an impact to--on the U.S. Government.

3 Q. Ma'am, is it fair to say that the United States Government
4 spends a lot on foreign policy--spends a lot of money?

5 A. Yes, I suppose that's fair, although the State Department
6 budget is dwarfed by the Department of Defense budget, so I guess "a
7 lot" is a relative term.

8 Q. Relative term for the United States Government?

9 A. Actually, that's--I can't say. Compared to domestic
10 programs--that's a tough question. You know, we certainly feel we--
11 from the foreign policy side--from the State Department, we,
12 certainly, would like our budget to be bigger.

13 Q. Yes, ma'am. Compared to other governments--let's go with
14 other industrialized governments--we spend more on foreign policy
15 than those other industrialized governments, right, ma'am?

16 A. Actually, I can't say that we do with any certainty. We
17 are--as the world's remaining super power, we are bigger than others,
18 we tend to have embassies and consulates in more location than some
19 of our allies, but I honestly can't say how much Great Britain or
20 France or Germany spend on their diplomatic--you know, foreign policy
21 spending.

1 Q. But, I guess to reinforce the answer that you just gave me,
2 we are, compared to those other peer-like countries, we are in more
3 places with American--United States Government personnel.

4 A. Yes, I think that's a fair statement.

5 Q. Now, wherever we are, there are people that will deal with
6 United States Government personnel out of fear, right?

7 A. I'm not sure I agree with that assessment, no.

8 Q. Some people, wherever we are in the world, will deal with
9 us because they respect us?

10 A. That's a fair statement.

11 Q. And some, if not most, will deal with the United States
12 Government personnel because they need us?

13 A. Countries deal--countries conduct their foreign policy
14 based on national interest, just as we do. It's hard to generalize
15 what's a need. I mean, I can't speak for another country---

16 Q. Right.

17 A. ----but diplomatic relation are the--in general, and have
18 been since the founding of our country--are the way that we deal--one
19 country deals with another.

20 Q. And they--that interactions is done, ultimately, in the
21 national interest of that country and the national interest of the
22 United States?

1 A. Well, speaking from the United States' perspective, we
2 conduct our relations in ways that we believe enhance and foster our
3 national interest, yes.

4 Q. And, generally, ma'am--your education and experience, is it
5 your opinion that American diplomats are professional--it's a
6 professional class of people?

7 A. Absolutely.

8 Q. But--and their dedication is to advance the national
9 interest of the United States?

10 A. Yes.

11 Q. The foreign diplomats with which you've worked, by and
12 large, they are also professional?

13 A. By and large, yes, they are.

14 Q. And they are dedicated to advancing their own--or their
15 national interests?

16 A. The national interests of their--the country they
17 represent, yes.

18 Q. And when you're acting in this professional capacity, when
19 you're advancing the national interest, sometimes it's appropriate to
20 set personal opinion aside?

21 A. Yes, absolutely.

22 Q. And sometimes it's appropriate to set emotional reaction
23 aside?

1 A. Absolutely.

2 Q. Because you still have a job to do?

3 A. I represent the--my job is to represent the foreign policy
4 of the United States. Whether or not I agree with each component of
5 that policy 100 percent, that's my job.

6 Q. Sometimes you have to--not only is it agreement or
7 disagreement with policy, it's a personal opinion about an
8 individual--like, you have to deal with a person and you have to put
9 aside your personal feelings in order to advance America's national
10 interests?

11 A. Yes--if you asking if I have had to deal with people I
12 don't like, personally, in the course of my career, yes, that's true.

13 Q. And it's safe to assume that diplomats from other
14 governments have been placed in that same position?

15 A. I would imagine so, yes.

16 Q. Ma'am, are you familiar with who Secretary Robert Gates is?

17 A. Yes, I am.

18 Q. Secretary Gates made a few statements with respect to these
19 disclosures and I just want to get your take on those. First, he---

20 ATC[CPT OVERGAARD]: Objection----

21 MJ: Yes?

22 ATC[CPT OVERGAARD]: ----hearsay.

1 ADC[MAJ HURLEY]: Ma'am, it's her expert opinion. These are
2 public statements made by Secretary Gates and----

3 MJ: Are they hearsay? Are you using them for a non-hearsay
4 purpose?

5 ADC[MAJ HURLEY]: I'm using them for a non-hearsay--well, I'm
6 using them for a non-hearsay purpose, ma'am, because they're not
7 offered for the truth of the matter asserted. I don't--I'm not----

8 MJ: Overruled.

9 [Examination of the witness continued.]

10 Q. Ma'am, Secretary Gates said, with respect to United States
11 Government leaks, that it's well-known that the United States
12 Government leaks like a sieve. How would you react to that?

13 A. I would say that makes a good sound bite, but I don't agree
14 with it.

15 Q. He said, with respect to the disclosures in this particular
16 case--the WikiLeaks disclosures--that statements like "game changer"
17 were fairly overwrought.

18 A. I don't necessarily agree with that statement, no.

19 Q. He would also characterize the disclosures as disclosing--
20 let me recast that question, ma'am. He also indicated then nations
21 don't deal with us because we can keep their secrets, they deal with
22 us because it's in their national interest.

1 with," but you also develop your own network of contacts. And it's a
2 process that happens over time. You get to know people, they talk to
3 you, you talk to them, and, depending on the situation, you know,
4 you--basically, you have to establish your credibility and your *bona*
5 *fides*. And the idea is to get your contacts to give you the back
6 story, give you insights onto--into what is happening in that
7 country. If they're in the government of that country, sort of how
8 policy is being formulated within the government. If they're a
9 member of the business community, you know, what their take is on,
10 say, the economic situation in the future. It's very situational in
11 terms of the types of contacts, but at the basis of it all is
12 establishing credibility and establishing trust.

13 Q. And is there an expectation in those conversations? Is
14 there any expectations going into those conversations when you're
15 sharing this back story information?

16 A. Again, it is situational, but--you know, if I am talking to
17 a senior government official, I have to assume that they are trying
18 to influence my position just as I'm trying to influence their
19 position. If it is a conversation that is--in which the government
20 official is expressing concern about his or her own government's
21 policy, there is an expectation of a certain amount of
22 confidentiality so that the person won't be burned.

23 ATC[CPT OVERGAARD]: Thank you.

1 MJ: All right. At this time, is it appropriate to move into
2 another session?

3 ATC[CPT OVERGAARD]: Yes, ma'am.

4 MJ: All right. Is there anything we need to address before we
5 do that?

6 ADC[MAJ HURLEY]: No, ma'am.

7 TC[MAJ FEIN]: No, ma'am, and this is from a prior finding for
8 Appellate Exhibit 550.

9 MJ: Yes. Let me ask a question, here, though. The parties had
10 asked for a long recess, after this witness testifies, for the
11 defense to speak with the next witness that's coming up. Do the
12 parties see a need for another open session after the closed session
13 with this witness or should we just plan to add that time in and come
14 back?

15 ADC[MAJ HURLEY]: From the defense, ma'am, it would be the
16 latter; add the time in and come back.

17 ATC[CPT OVERGAARD]: There's no need to come back on the record,
18 ma'am.

19 MJ: All right. Well, let's--to advise the public, then, what
20 time do you think we would be expected to come back on the record,
21 having gone through the closed session as well as the time that you
22 need to do--to prepare?

23 TC[MAJ FEIN]: Can the parties have a moment, ma'am?

1 MJ: Yes.

2 [The parties for both sides conferred.]

3 ADC[MAJ HURLEY]: Ma'am, 1430.

4 MJ: All right. Is that acceptable to the government?

5 TC[MAJ FEIN]: Yes, ma'am.

6 MJ: All right. Members of the gallery, the court--the open
7 session of the court is going to be in recess. We will reconvene,
8 then, at 1430 for the open session for the next witness. Court is in
9 recess.

10 [The court-martial recessed at 1057, 1 August 2013.]

11 [END OF PAGE]

Pages 11519 through 11579 of this transcript are classified “SECRET”. This session (1 August 2013, Session 1) is sealed for Reasons 2 and 3, Military Judge’s Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

Pursuant to AE 550, the unclassified and redacted version follows.

~~SECRET~~

1 [The court-martial was called to order at 1137, 1 August 2013.]

2 MJ: Court is called to order. All parties present when the
3 court last recessed are again present in court. The witness is on
4 the witness stand. Major Fein?

5 TC[MAJ FEIN]: Yes, ma'am. Your Honor, this session is--will
6 be--is a closed session, classified at the Secret level. The court
7 security officer cleared the courtroom and completed his checklist
8 and that will be filed with the post-trial documents.

9 And, also, ma'am, in the courtroom, other than the parties,
10 is the bailiff, the Court's paralegal, members of the prosecution
11 team, the security, members of the defense team, and U.S. government,
12 properly cleared, officials.

13 MJ: Proceed.

14 [Ms. Dibble was reminded of her previous oath and examination
15 continued.]

16 Questions by the assistant trial counsel [CPT OVERGAARD]:

17 Q. In the open session, you talked about your experience in
18 preparing cables?

19 A. Uh-huh.

20 Q. Could you tell us, has that way--has the way of preparing
21 cables changed at all in the Bureau of Near Eastern Affairs as a
22 result of WikiLeaks?

~~SECRET~~

~~SECRET~~

1 A. I think it's fair to say that our officers are a little
2 more cautious than they were before because, when the purported
3 cables were released, a number of our sources were identified and, in
4 some cases, compromised--some of our contacts--so--especially in the
5 immediate aftermath, I think it led to a--us including less detail in
6 cables, especially identifying details.

7 Q. And what was the impact, in your opinion, of including less
8 detail?

9 A. Well, you don't get the full picture, the full context--as
10 much of the back story as you would. I mean, as with anything, the
11 more sharper [sic] you can paint a picture, the clearer the story is.
12 So there was a bit of--I think a bit more fuzziness, if you will.
13 And, maybe a word about why we included names in the first place,
14 because, if I am a reporting officer and I am writing a cable on the
15 democracy movement in Syria, I mean, just to give as an example, my
16 conversations with certain people who are identified with that
17 democracy movement or who are activists are much more meaningful than
18 if I'm just talking to a taxi driver or a busboy at the hotel. So,
19 you're--again, to help the readership back in the interagency policy
20 community have a better understanding of the situation, we included
21 identifying information, in some cases, with the parenthesis, "please
22 protect," because we were concerned about disclosure of who our
23 contacts were.

~~SECRET~~

~~SECRET~~

1 Q. And you'd also mentioned comments were often in a lot of
2 the cables that were written. Why are those comments important to
3 include in cables?

4 A. The comment portion of a cable is often used for the
5 drafting officer or the Embassy, the ambassador, the DCM--Deputy
6 Chief of Mission is DCM--to add his or her opinion analysis of the
7 facts being reported. You know, we can write a cable on Subject X,
8 you know, the upcoming elections in--pick a country--and we can state
9 the facts: "The elections are going to be held on this day. There
10 are X number of candidates vying for X number of seats," but it's
11 often in the comments section where the color, the background, and
12 the opinions--the analysis of the drafting officer or of the Embassy
13 get put in.

14 Q. And why is that analysis of the drafting officer so
15 important at the Embassy?

16 A. It's important because it tells Washington in--for an
17 example, that--"Okay, although these are the facts, we don't think
18 this is actually--this is what we're being told by the government or
19 these are the facts--this isn't how we actually think this is going
20 to turn out," or, "These are the facts and these facts are important
21 because of this. You know, "This is our interpretation," because
22 that's really what we're there to do is not to just report what
23 anyone could read in the media, but to add our analysis

~~SECRET~~

~~SECRET~~

1 interpretation of what this means and why it's important for U.S.
2 interests, for U.S. foreign policy, why it matters to us.

3 Q. And what is your analysis and interpretation based on?

4 A. It is based on analysis of the facts, but it's also based
5 on the feel that we have because we're on the ground and we're the
6 eyes and ears of the U.S. government on the ground. It is based on
7 our views on the credibility of the person who is telling us
8 something. It's--that's an area where the comment or analysis area--
9 where, if we think someone is telling us something because they think
10 we want to hear it, you know, we'd say it there. "Well, this is what
11 the government is saying, but our other sources tell us--or indicate
12 to us that this is really what's happening or this is what's behind
13 that decision."

14 So it goes--it delves a layer or two deeper into the
15 situation to put it in context for our readership back in the U.S.

16 Q. Now, we talked a little bit in the open session about when
17 the cables were first released. What position were you in when the
18 actual leaks--or the unauthorized disclosures first began?

19 A. I was a Deputy Assistant Secretary in the Bureau of
20 European Affairs at the time.

21 Q. What does it mean to be the Deputy Assistant Secretary?

22 A. I worked for the Assistant Secretary. I was one of--I
23 believe there were seven of us working on European Affairs. My

~~SECRET~~

~~SECRET~~

1 specific portfolio included Western Europe--so the 11 countries of
2 Western Europe as defined by the State Department--and I also covered
3 the European Union. I had just come from being Deputy Chief of
4 Mission in Rome. Italy was one of the countries that I covered.

5 Q. Did you, personally, experience any impact from the
6 unauthorized disclosures?

7 A. Yes, unfortunately.

8 Q. What was it?

9 A. I had been, as I said, Deputy Chief of Mission, and for a
10 period of 7 months, I was chargé d'affaires in Rome when we were
11 between ambassadors.

12 Q. Can you tell us what that means?

13 A. Chargé d'affaires is when there is no ambassador in a
14 country, the senior--the next most-senior official is in charge of
15 the Embassy; it's the acting-ambassador, if you will. And I was
16 acting-ambassador in Italy from February to August of 2009. Included
17 in that period was a visit to Italy by President Obama; his first
18 visit to Italy.

19
20
21
22
23

~~SECRET~~

~~SECRET~~

1 Q.

2 A.

3

4

5

6

7

8 Q. And just go--you said you were the reviewer. So what does
9 that mean as far as how the cable appears?

10 A.

11

12

13

14

15

16

17 Q.

18 A.

19

20

21

22 Q.

23

~~SECRET~~

~~SECRET~~

1 A. I had just left Rome when the first wave of cables came
2 out--or purported cables came out and the--I was in my new job as
3 Deputy Assistant Secretary for Western Europe. I was vilified in the
4 Italian press for insulting the honor of the Prime Minister. It
5 hampered my--because my Italian contacts were, I think, embarrassed
6 by this, it hampered my ability, to a certain extent, to deal with
7 the Italians. I got comments like, "Well, we thought you were our
8 friend. We thought you could--we could trust you." Right after the
9 release occurred, the, then Secretary of State, Secretary Clinton met
10 with Prime Minister Berlusconi at an OSCE, Organization for Security
11 and Cooperation in Europe, Summit in Kazakhstan and he raised--I was
12 not in this meeting, but my boss, the Assistant Secretary for
13 European Affairs was and----

14 ADC[MAJ HURLEY]: Pardon me, Ms. Dibble. Ma'am, we'd object as
15 to hearsay.

16 MJ: Yes?

17 [Examination of the witness continued.]

18 Q. And, actually, we would just ask that you focus on your
19 personal impact, versus what you heard.

20 WIT: Well, I got told by my boss, when he got back from this
21 meeting----

22 ADC[MAJ HURLEY]: Again, I'm sorry to interrupt Ms. Dibble.
23 Objection, hearsay.

~~SECRET~~

~~SECRET~~

1 Q. Without going into what your boss said, what impact did you
2 experience?

3 A.

4

5 Q. And when did you move back over to the Near Eastern Affairs
6 Bureau?

7 A. In the summer of 2011, right around Labor Day.

8 Q. And were there still cables being posted on WikiLeaks at
9 that time?

10 A. Yes, I think there was a tranche--I believe there was a
11 tranche--or the full tranche was posted in that summer in August, as
12 I recall. I don't recall the exact date, but----

13 Q. Did you review any of those cables at the--in the Near East
14 Affairs Bureau?

15 A. Yes, I did. And we're going to start--and we're just going
16 to talk about what's been the overall impact and then break down into
17 the specific countries. So, can you tell us about, just what overall
18 impact of the release of these cables was on the Near East?

19 A. Again, I think----

20 Q. On the U.S. operation----

21 A. Sure.

22 Q. ----in the Near East.

23 A. On U.S. operations?

~~SECRET~~

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.
2. Judge advocate's review pursuant to Article 64(a), if any.
3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
4. Briefs of counsel submitted after trial, if any (Article 38(c)).
5. DD Form 494, "Court-Martial Data Sheet."
6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.
7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

- a. Errata sheet, if any.
- b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
- c. Record of proceedings in court, including Article 39(a) sessions, if any.
- d. Authentication sheet, followed by certificate of correction, if any.
- e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
- f. Exhibits admitted in evidence.
- g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
- h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.